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WHEN: Tuesday, October 5, 2010
9 a.m.–12:30 p.m.

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Contents

Federal Register

Vol. 75, No. 185

Friday, September 24, 2010

Separate Parts In This Issue

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register

Vol. 75, No. 185

Friday, September 24, 2010

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AD71

Short-Term, Small Amount Loans

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its general lending rule to enable Federal credit unions (FCUs) to offer short-term, small amount loans (STS loans) as a viable alternative to predatory payday loans. The amendment permits FCUs to charge a higher interest rate for an STS loan than is permitted under the general lending rule, but imposes limitations on the permissible term, amount, and fees associated with an STS loan. This final rule also requires an FCU to set a cap on the total dollar amount of STS loans it will make and to set a length of membership requirement of at least one month. Also, any loan under this rule must be fully amortized. The STS loan alternative will assist FCUs in meeting their mission to promote thrift and meet their members' credit needs, particularly the provident needs of members of modest means. Permitting a higher interest rate for STS loans will allow FCUs to make loans cost effective while the limitations will appropriately constrain the product to meeting its purpose as an alternative to predatory credit products. This final rule also includes guidance in the form of "best practices" FCUs should consider incorporating into their individual STS programs.

DATES: This rule will become effective on October 25, 2010.

FOR FURTHER INFORMATION CONTACT: Justin M. Anderson, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Credit Union Act (the Act) permits FCUs to make loans and extend lines of credit to members but prohibits FCUs from charging an annual percentage rate (APR), inclusive of all finance charges, above 15%. 12 U.S.C. 1757(5)(A)(vi). The Act, however, permits the NCUA Board (the Board), after considering certain statutory criteria, to establish a higher interest rate ceiling in 18-month cycles. *Id.* At its July 2009 meeting, the Board reapproved an APR ceiling of 18%, effective until March 10, 2011. NCUA Letter to Federal Credit Unions 09–FCU–06 (July 2009).

The Board reviewed NCUA's regulatory structure and recognized that under this current structure many FCUs could not provide their members with a reasonable alternative to traditional payday loans. The Board, therefore, considered amending its regulations to provide FCUs with a regulatory structure under which they could offer a responsible payday loan alternative to members in a safe and sound manner.

B. Proposed Rule

On April 29, 2010, the Board issued a proposed rule amending § 701.21 to increase the interest rate ceiling for STS loans, provided FCUs made the loans within the requirements of the rule. 75 FR 2447 (May 5, 2010). The Board also specifically asked for comments on the issues of amortization, utilizing a 36% APR inclusive of all fees, and requiring members to participate in direct deposit or payroll deduct. The comment period closed on July 6, 2010. The Board received 33 comments from: Two credit union trade associations; one bank trade association; two private citizens; sixteen credit unions; seven State credit union leagues; three consumer advocacy groups; one credit union service organization; and one philanthropic foundation. Commenters addressed a wide range of issues including the different requirements of the rule, those areas where the Board specifically requested comment, and other aspects of payday lending that were not related to this rule.

C. Summary of Comments

1. General

While most commenters supported the idea and framework of the rule, many commenters offered a suggestion on one or more aspects of the proposal. There were, however, three commenters that supported the proposed rule as drafted, four that did not support the rule, and one that only provided details about its payday alternative program. The commenters that supported the rule as written believe the rule would be a valuable tool FCUs could use to assist their members, is in line with the mission and purpose of the FCU charter, and would provide members with a way to safely break the payday loan cycle.

Of the commenters that did not support the rule, one commenter generally opposed the idea of payday lending and believed NCUA should monitor and regulate existing programs, rather than help foster an alternative. Two other commenters did not believe the terms of the rule would be attractive to FCUs or borrowers. Finally, one commenter believed credit unions should be permitted to develop their own programs instead of NCUA creating one. With respect to the last comment, the Board notes this final rule does not prohibit an FCU from continuing or participating in a closed or open-end payday loan program that operates successfully and legally under NCUA's Regulations and the Federal Reserve Board's Regulation Z (Reg Z). 12 CFR Part 226.

2. Specific Comments and NCUA's Response

The remaining 25 commenters generally supported the rule, but offered suggestions on specific aspects of the rule or provided comments on the sections where the Board specifically requested comments. The Board considered all of the comments and modified the final rule where appropriate. The specific comments and NCUA's responses are discussed in the following section-by-section analysis.

a. Permissible Interest Rate

A majority of the commenters believed an interest rate ceiling of 1000 basis points above the established general interest rate ceiling, as set by the Board, was sufficient for FCUs offering an STS product. As noted above, the Board set interest rate ceiling is currently at 18%. A few other commenters, however, provided alternative suggestions for the Board's consideration. Two commenters believed the interest rate ceiling for STS loans should be higher to account for the higher degree of risk associated with this type of lending, but did not provide a specific interest rate they favored. Two other commenters believed a 36% all inclusive APR was appropriate, citing a relation to the Department of Defense (DOD) regulations and the need to keep costs as low as possible for borrowers.

Two commenters advocated maximum flexibility and believed FCUs should be permitted to choose between a 36% all inclusive APR and the proposed rate and fee structure. One commenter believed the APR for STS loans should be 36% plus a $20 application fee. Other individual commenters suggested approaches, such as an 18% APR with a broader definition of finance charges, allowing a 28% APR for all legally permissible payday programs, and not increasing the APR at all.

The Board has considered these comments and, based on the reasons set forth in the preamble to the proposed rule, has decided to proceed with the proposed structure of an APR 1000 basis points above the Board approved interest rate ceiling, which currently would be 28%, and a $20 application fee.

With respect to the comments on FCUs being able to offer this product to members of the military, the Board notes that the definition of a payday loan in the DOD regulations would not include most loans made under this final rule. The DOD regulations provide the following definition of a payday loan:

(i) *Payday loans.* Closed-end credit with a term of 91 days or fewer in which the amount financed does not exceed $2,000 and the covered borrower:

(A) Receives funds from and incurs interest and/or is charged a fee by a creditor, and contemporaneously with the receipt of funds, provides a check or other payment instrument to the creditor who agrees with the covered borrower not to deposit or present the check or payment instrument for more than one day, or;

(B) Receives funds from and incurs interest and/or is charged a fee by a creditor, and contemporaneously with the receipt of funds, authorizes the creditor to initiate a debit or debits to the covered borrower's deposit account (by electronic fund transfer or remotely created check) after one or more days. This provision does not apply to any right of a depository institution under statute or common law to offset indebtedness against funds on deposit in the event of the covered borrower's delinquency or default.

32 CFR 232.2. Under the terms of this final rule, all STS loans will be for less than $2,000 and many will have maturities less than 91 days. The terms of this final rule, however, do not require an FCU to obtain a check or payment instrument or authorization to debit a member's account contemporaneously with an extension of credit. Further, NCUA does not generally expect FCUs to need to require a check or payment instrument and, as discussed below, FCUs are prohibited from conditioning the extension of credit on a member's consent for electronic debit. An FCU, therefore, will typically be able to offer loans under the terms of this rule to members of the military without violating the DOD regulations.

b. Loan Term

Approximately one-third of the commenters submitted comments on the proposed permissible loan term. Of those commenters, most believed the minimum loan term should be greater than 30 days, with commenters citing a range between 90–120 days as an acceptable minimum term. Some commenters also believed the maximum loan terms should also be longer, citing 12 to 18 months as an acceptable range for the maximum loan term. The commenters who advocated for a longer term believed that a longer term was necessary to enable borrowers to pay back a loan in small, more manageable payments.

After considering the comments and for the reasons articulated in the preamble to the proposed rule, the Board has decided to keep the proposed terms of a minimum maturity of one month and a maximum maturity of six months. The Board believes this final rule should provide a high level of protection for borrowers, and is concerned that longer term loans may actually have unintended negative consequences. The Board is specifically concerned that borrowers with longer term STS loans may continue to use payday lenders to cover expenses that arise during repayment. While it is possible that this scenario may also occur under the maturity structure in this rule, the Board believes loans with maturities between one and six months will provide borrowers with frequent enough access to credit to minimize the need for additional loans from payday lenders. To effectuate the beneficial nature of a one to six month maturity and ensure maximum borrower protection, the Board is reaffirming its statement in the preamble to the proposed rule that FCUs should structure the terms of an STS loan in a way that allows a borrower to repay the loan in the given term. NCUA will scrutinize an FCU's program to ensure loans are being made in a way that provides a member with the best chance to successfully repay a loan made under this rule.

c. Number of Loans and Roll-Overs

Approximately one-third of the commenters addressed the issues of roll-overs and the permissible number of loans. While most commenters agreed the final rule should prohibit roll-overs, there were three commenters that believed roll-overs could be appropriate in limited circumstances. The commenters cited that without roll-overs a borrower who cannot pay off the loan within the loan term will incur late fees and, possibly, a negative entry on his or her credit report. Also, one commenter asked for further clarification of the term "roll-over" in the final rule.

After considering these comments, the Board has determined to keep the prohibition against roll-overs, but will provide some flexibility in the final rule so borrowers can meet their payment obligations without incurring additional fees. While the Board continues to disagree that roll-overs are ever appropriate, it believes permitting FCUs to extend the term of a loan, without any additional fees, may be beneficial to both FCUs and borrowers. The prohibition against roll-overs in this rule applies to situations in which a borrower is charged additional fees for extending or "re-borrowing" funds to avoid delinquency. Under this rule, an FCU may, however, extend the term of the loan, within the maximum loan term set by this rule, provided the FCU does not charge any additional fees, except interest, or extend any additional funds. For example, if a borrower takes out a $300 loan for three months and, at some point within those three months, is unable to continue making payments, the FCU can extend the loan term for another one to three months, but cannot extend any new credit or charge additional fees in connection with this extension. The Board believes allowing for an extension without any additional fees will provide borrowers with the best opportunity to repay the loan and avoid delinquencies. NCUA generally expects FCUs, however, to set the term and amount of the loan in a way that allows borrowers to repay it within the term and avoid the need to extend a loan.

With respect to the number of loans, most commenters believed there should be a higher limit on the number of loans a borrower may have in a 12-month period or no cap at all. Commenters believed that the number imposed in the proposed rule was too limiting and could drive borrowers back to payday lenders.

After considering these comments the Board has determined to proceed with the terms in the proposed rule, which limit FCUs to making only one loan at a time to a member and no more than three in any rolling six-month period. In response to the commenters advocating for a higher number of loans, the Board disagrees that a limited number of loans will push borrowers back to payday lenders. As noted above, the Board intends this rule to provide borrowers with enough access to credit to preclude the need for a borrower to also borrow from a payday lender. The Board also intends this rule to help borrowers curtail the repetitive use of payday loans and transition them to more mainstream financial products and more responsible borrowing. A cap of three loans in any rolling six-month period coupled with the minimum and maximum maturities, set out above, achieves this balance of providing borrowers with sufficient access to credit while helping borrowers transition from a reliance on repetitive borrowings.

d. Application Fee and Amount of the Loan

Approximately one-half of the commenters addressed the appropriate amount of an application fee. Two commenters believed $20 was an appropriate amount but two other commenters felt an application fee should be capped at $25. Of the remaining commenters, four believed the application fee should be higher, but did not provide a specific amount and several commenters believed FCUs should be permitted to set their own application fees in accordance with Regulation Z or the application fee should be tied to the amount of the loan. All commenters who sought a higher application fee cited an increased risk in this type of lending. Two commenters believed FCUs should charge a borrower only one $20 application fee every six months and two commenters believed the Board should not permit FCUs to charge any fees for these loans, including application and late fees. All commenters who favored a lower fee or no fee cited a minimal underwriting process that does not justify a fee.

After considering the comments, the Board has decided to keep the proposed maximum application fee of $20. While the Board agrees that this type of lending is inherently riskier than many other types of lending, it is interest income and not the application fee that allows FCUs to offset the higher degree of risk. The Board notes, Reg Z limits application fees to the recovery of costs associated with processing applications for credit that are charged to all consumers who apply, regardless if credit is actually extended. 12 CFR 226.4(c)(1). For the reasons articulated in the preamble to the proposed rule, the Board believes a maximum application fee of $20 is sufficient to allow FCUs to recoup the costs associated with processing an application for an STS loan. With regard to those commenters who argued for a lower application fee or a restriction that application fees be charged only once in a six-month period, the Board points out that $20 under this rule is the maximum amount FCUs can charge for an application fee and that FCUs are still bound by the definition of application fee in Reg Z. As such, an FCU's application fee can only be the amount needed to recoup the actual costs associated with processing an application. If an FCU undertakes a more limited application process with repeat borrowers, there would be no justification for charging the same application fee each time the borrower applied. NCUA will scrutinize application fees to ensure FCUs are using the fee to recoup costs associated with processing an application and not to account for the riskier nature of this type of lending.

On the issue of the permissible amount of a loan, slightly less than one-half of the commenters provided suggestions. A majority of the commenters believed the minimum loan amount should be less than $200, citing a high demand for loans between $50 and $100. One commenter believed the minimum loan amount was acceptable, but the maximum loan amount should be $2,500. Finally, one commenter believed that the maximum amount should be lowered because most payday borrowers cannot pay back $1,000, even over a six-month period.

The Board believes the proposed minimum loan amount of $200 and the proposed maximum amount of $1000 are appropriate and has included these amounts in the final rule. With respect to those commenters who advocated for a lower minimum amount, the Board notes, as discussed above, that this rule does not prohibit FCUs from making smaller loans that are legal under NCUA's regulations and Reg Z. Also, as noted in the preamble to the proposed rule, a minimum loan amount of $200 is in-line with the typical loan extended to payday loan borrowers.

In response to the commenter who argued that the maximum loan amount should be $2,500, the Board does not believe it would be prudent to allow FCUs to lend amounts over $1,000 to borrowers at terms of six months or less. As noted in the preamble to the proposed rule, the Board chose a maximum loan amount of $1,000 because it may allow borrowers to repay loans from payday lenders and transition to more traditional FCU products while still being a manageable short-term loan.

Finally, in response to the comment that most borrowers could not pay back $1,000 in six months and, therefore, the maximum amount should be lower, the Board notes the discussion above regarding the impetus for a maximum loan of $1,000. In addition, as discussed earlier in this preamble, the Board expects FCUs to extend loans to borrowers in amounts and under terms in which the borrower can manage repayment of the loan, within the confines of this rule.

e. Amortization and Length of Membership Requirements

In response to the Board's specific request for comment on the issue of amortization, approximately one-third of the commenters provided a response. The majority of those commenters believed that the final rule should require FCUs to fully amortize STS loans. There were two commenters, however, that believed FCUs should have the option to use balloon payments, citing that, in limited circumstances, balloon payments may actually benefit members.

The Board agrees with the majority of the commenters that FCUs should fully amortize loans made under this rule, and is including a specific requirement in the final rule. The Board notes that balloon payments often create additional difficulty for borrowers trying to repay their loans, and requiring FCUs to fully amortize the loans will allow borrowers to make manageable payments over the term of the loan, rather than trying to make one large payment. Under the requirement to amortize a loan, FCUs must structure the payments so that the borrower is paying a portion of the principal and interest in equal or near-equal installments on a periodic basis over the course of the loan. While the Board is not prescribing specific payment schedules, *i.e.,* monthly or bi-weekly, FCUs should offer payment schedules that allow borrowers to easily repay the loan within the given term.

Approximately one-quarter of the commenters addressed the issue of a length of membership requirement. Of those commenters, all but one believed FCUs should have the option to impose a length of membership requirement, but that it should not be a regulatory requirement. The Board disagrees that FCUs should have the option of setting a length of membership requirement and has included a requirement in the final rule that FCUs set a length of minimum membership requirement of at least one month. The Board wants to provide FCUs with as much flexibility as possible in developing an STS loan program, but it must consider the riskier nature of this type of loan and the safety and soundness of the FCUs offering them. The Board believes a minimum membership requirement of one month will build a meaningful relationship between the borrower and the FCU and help reduce the chance of a borrower defaulting on an STS loan. While the final rule imposes a minimum requirement of one month, individual FCUs should evaluate their risk tolerance and set a membership requirement accordingly.

f. Lending Cap and Payroll Deduct/Direct Deposit

Less than a quarter of the commenters addressed the issue of a lending cap. Of those commenters, there was an even split between the number of commenters that believed NCUA should impose a cap and those that believed the Board should permit FCUs to set their own cap. The Board received three suggestions on how to establish a cap: Setting a cap at 20% of net worth; 5–10% of assets; and a cap only on the dollar amount of total loans made as a percentage of net worth.

After considering these comments, the Board has decided to require FCUs to set a cap in their written lending policies on the aggregate dollar amount of loans outstanding not to exceed 20% of total net worth. While the Board believes it is preferential to allow an FCU to evaluate its own risk tolerance and resources in setting a cap, the Board also wants to provide FCUs with a ceiling to ensure any cap set by an FCU is sufficient from a safety and soundness perspective. The Board believes a cap on the aggregate dollar amount with a ceiling of 20% net worth will be sufficient to ensure FCUs are not exposed to unnecessary risks and their resources are not stretched. Depending on the success of these programs, the Board can consider raising the cap ceiling at a later date.

Over half of the commenters addressed the issue of requiring credit unions to provide STS loans only to members that had direct deposit or authorized payroll deduction. Of those commenters, nearly three-quarters believed FCUs should have the option to require direct deposit or payroll deduct as part of their program, but it should not be a regulatory requirement. One commenter believed it should be a regulatory requirement and three believed the rule should specifically prohibit the practices. One of the commenters that believed the rule should prohibit the practices stated that requiring payroll deduct to obtain a loan was prohibited by the Federal Reserve Board's Regulation E.

The Board agrees with a majority of the commenters that direct deposit and payroll deduct for members should not be regulatory requirements. While the Board believes direct deposit is a useful tool for limiting risk, it recognizes that a regulatory requirement may restrict FCUs from offering STS loans to members who may not have access to direct deposit. Rather, the Board believes an FCU should be able to evaluate its risk tolerance and members' needs in determining whether or not to require members to participate in direct deposit in order to borrow an STS loan.

On the issue of payroll deduct, the Board notes that Regulation E prohibits financial institutions, including FCUs, from conditioning an extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers. 12 CFR 205.10(e)(1). However, under Regulation E, FCUs can offer members a lower rate or other incentives if they participate in payroll deduct. 12 CFR Part 205, Supplement I, 205.10(e)(1). The Board believes that payroll deduction is an important tool for FCUs to utilize in lowering the risk associated with these loans. Based on these considerations, the Board will let individual FCUs decide if they wish to provide an incentive to or encourage members to utilize payroll deduct or other pre-authorized electronic fund transfers, but will not include any regulatory requirement. The Board is also modifying the best practices section in the final rule to reflect these legal considerations regarding payroll deduction.

g. Underwriting and Best Practices

In addition to comments on the specific requirements of the rule, the Board also received a few comments requesting that it not require specific underwriting criteria in the regulation and also not change the best practices section into regulatory requirements. With regard to underwriting, the Board will proceed with the approach in the proposed rule that an FCU is required to establish underwriting standards in its written lending policies, but the Board will not require specific standards. The Board believes an FCU is in the best position to evaluate the needs of its members and its risk tolerance and set appropriate underwriting standards. The Board will also keep the underwriting in the best practices section to provide FCUs with guidance on how to structure underwriting for STS loans. With respect to the best practice section, the Board will keep the approach in the proposed rule and offer this section as guidance and not as a regulatory requirement. While the Board believes the suggestions in the best practices section may be beneficial to FCUs and members, the Board also believes an FCU should have flexibility to determine the features of its own program.

h. Other Comments

In addition to the comments addressed above, the Board received several comments that did not address specific features of the rule, but warrant a discussion in this preamble. Several commenters asked NCUA to collect data about STS loans under this rule and reevaluate the requirements in a year. The Board agrees with these commenters and will modify the 5300 call report by January 2011 to include new sections to evaluate loan programs under this rule. One year from the effective date of this final rule the Board will evaluate the data collected on the 5300 call report and reevaluate the requirements in the final rule.

There were also several commenters that urged NCUA to take enforcement actions against FCUs that are offering predatory payday lending products. The Board notes that NCUA staff will continue to investigate programs that may be predatory in nature and take action where appropriate.

D. Dodd-Frank Wall Street Reform and Consumer Protection Act (The Dodd-Frank Act)

The Dodd-Frank Act, signed into law by President Obama on July 21, 2010, includes, as Title XII, the Improving Access to Mainstream Financial Institutions Act of 2010 (Title XII). Title XII includes, among other things, Federal assistance to Federally-insured financial institutions that are providing small-dollar value loans. Specifically, § 1205 of Title XII authorizes the

Secretary of the Treasury to establish multi-year demonstration programs by means of grants, cooperative agreements, financial agency agreements, and similar contracts or undertakings with eligible entities to provide low-cost, small loans to consumers that will provide alternatives to more costly small dollar loans. The Dodd–Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, § 1205 (2010). Institutions participating in programs under this section are required to promote and provide financial education and literacy to small-dollar loan borrowers.

In addition, section 1206 amends the Community Development Banking and Financial Institutions Act of 1994 by requiring the Community Development Fund (the Fund) to make grants to community development financial institutions (CDFIs) and to any other Federally insured depository institution with a primary mission to serve targeted investment areas to enable such institutions to establish a loan-loss reserve fund to defray the costs of a small dollar loan program established or maintained by such institution. *Id.* at section 1206(a)(1). Institutions accepting grants under this section are required to provide non-Federal matching funds in an amount equal to 50% of the grant. This section also requires the Fund to make technical assistance grants to be used for technology, staff support, and other costs associated with establishing a small-dollar loan program. To receive a grant or technical assistance grant under this section, a financial institution must have or establish a program with loans under $2,500 that are paid in installments with no pre-payment penalties, and the institution must report payments of the loan to at least one consumer reporting agency and meet any other affordability requirements established by the Administrator of the Fund. *Id.* at section 1206(b). Title XII also grants the Secretary of the Treasury the authority to issue regulations implementing and administering the grants and programs discussed in Title XII. *Id.* at section 1209.

The Board would like to clarify that the requirements of this final rule will not prohibit an FCU, which is otherwise eligible, from receiving a grant or participating in a program under Title XII. The requirements and best practices guidance in the final rule are in line with the requirements imposed by Title XII on participating financial institutions. FCUs will be able to comply with the requirements of the final rule to take advantage of the higher interest rate and still be within the limitations of Title XII.

As discussed above, the Secretary of the Treasury has the authority to issue regulations implementing Title XII and the Administrator of the Fund can impose other affordability requirements for grants. The Board will review any regulations or requirements related to the Title XII grants and programs and compare them to the requirements in the final rule to ensure FCUs with STS loan programs can continue to take advantage of the benefits included in Title XII.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under $10 million in assets). This final rule increases the interest rate ceiling for STS loans and sets out several STS loan program requirements an FCU must meet to take advantage of the higher interest rates. The final rule will not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, Public Law 104–121, provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Information and Regulatory Affairs, an office within OMB, is currently reviewing this rule, and NCUA anticipates it will determine that, for purposes of SBREFA, this is not a major rule.

Paperwork Reduction Act

This rule adds a requirement that Federal credit unions establish a cap on short-term, small-dollar loans in their general written lending policies, which Federal credit unions are already required to maintain and is currently approved under the Paperwork Reduction Act control number 3133–0139. NCUA has determined that the requirements of this rule are additions to an FCU's customary business records and do not increase the paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on State and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The final rule will not have substantial direct effects on the States, on the connection between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this final rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 701.

Credit unions, Federal credit unions.

By the National Credit Union Administration Board on September 16, 2010.

Mary Rupp,

Secretary of the Board.

■ For the reasons discussed above, the National Credit Union Administration is amending 12 CFR chapter VI as set forth below:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 766, 1767, 1782, 1784, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.;* 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. In § 701.21 add paragraph (c)(7)(iii) to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(c) * * *

(7) * * *

(iii) *Short-term, small amount Loans (STS loans).* (A) Notwithstanding the provisions in § 701.21(c)(7)(ii), a Federal credit union may charge an interest rate of 1000 basis points above the maximum interest rate as established by the Board, provided the Federal credit union is making a closed-end loan in accordance with the following conditions:

(*1*) The principal of the loan is not less than $200 or more than $1000;

(*2*) The loan has a minimum maturity term of one month and a maximum maturity term of six months;

(*3*) The Federal credit union does not make more than three STS loans in any rolling six-month period to any one borrower and makes no more than one short-term, small amount loan at a time to a borrower;

(*4*) The Federal credit union must not roll-over any STS loan;

(A) The prohibition against roll-overs does not apply to an extension of the loan term within the maximum loan terms in paragraph (c)(7)(iii)(*3*) provided the Federal credit union does not charge any additional fees or extend any new credit.

(B) [Reserved]

(*5*) The Federal credit union fully amortizes the loan;

(*6*) The Federal credit union sets a minimum length of membership requirement of at least one month;

(*7*) The Federal credit union charges an application fee to all members applying for a new loan that reflects the actual costs associated with processing the application, but in no case may the application fee exceed $20; and

(*8*) The Federal credit union includes, in its written lending policies, a limit on the aggregate dollar amount of loans made under this section of a maximum of 20% of net worth and implements appropriate underwriting guidelines to minimize risk; for example, requiring a borrower to verify employment by producing at least two recent pay stubs.

(B) *STS Loan Program Guidance and Best Practices.* In developing a successful STS loan program, a Federal credit union should consider how the program will help benefit a member's financial well-being while considering the higher degree of risk associated with this type of lending. The guidance and best practices are intended to help Federal credit unions minimize risk and develop a successful program, but are not an exhaustive checklist and do not guarantee a successful program with a low degree of risk.

(*1*) *Program Features.* Several features that may increase the success of an STS loan program and enhance member benefit include adding a savings component, financial education, reporting of members' payment of STS loans to credit bureaus, or electronic loan transactions as part of an STS program. In addition, although a Federal credit union cannot require members to authorize a payroll deduction, a Federal credit union should encourage or incentivize members to utilize payroll deduction.

(*2*) *Underwriting.* Federal credit unions need to develop minimum underwriting standards that account for a member's need for quickly available funds, while adhering to principles of responsible lending. Underwriting standards should address required documentation for proof of employment or income, including at least two recent paycheck stubs. FCUs should be able to use a borrower's proof of recurring income as the key criterion in developing standards for maturity lengths and loan amounts so a borrower can manage repayment of the loan. For members with established accounts, FCUs should only need to review a member's account records and proof of recurring income or employment.

(*3*) *Risk Avoidance.* Federal credit unions need to consider risk avoidance strategies, including: requiring members to participate in direct deposit and conducting a thorough evaluation of the Federal credit union's resources and ability to engage in an STS loan program.

* * * * *

[FR Doc. 2010–23610 Filed 9–23–10; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0364; Directorate Identifier 2009–NE–27–AD; Amendment 39–16446; AD 2010–20–11]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Trent 700 and Trent 800 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> In completing a review of Engine Manual repair/acceptance limits for titanium compressor shafts, Rolls-Royce has found the specified limits to be incorrect such that the shot peened surface layer at life critical features (the axial dovetail slots) may have been inadvertently removed in-service. Removal of the shot peened layer results in increased vulnerability of the part to tensile stresses, which could reduce the life of the shaft to below the published life limits.

We are issuing this AD to prevent failure of the intermediate-pressure (IP) and high-pressure (HP) shaft, which could result in an overspeed condition, possible uncontained disc failure and damage to the airplane.

DATES: This AD becomes effective October 29, 2010.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: james.lawrence@faa.gov;* telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 7, 2010 (75 FR 17630). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> In completing a review of Engine Manual repair/acceptance limits for titanium compressor shafts, Rolls-Royce has found the specified limits to be incorrect such that the shot peened surface layer at life critical features (the axial dovetail slots) may have been inadvertently removed in-service. Removal of the shot peened layer results in increased vulnerability of the part to tensile stresses, which could reduce the life of the shaft to below the published life limits. The acceptable limits for material loss on these surfaces have now been corrected in the Engine Manual.
>
> This AD identifies shafts for which such dressing operations have been known to have been carried out and requires that an inspection for compliance with the corrected Engine Manual limits be accomplished and that the shafts be dispositioned accordingly.

Comments

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Requests To Change Paragraphs (e)(1) and (e)(2) of the Proposed AD

Two commenters, The Boeing Company and American Airlines, ask us to change paragraphs (e)(1) and (e)(2) of the proposed AD to clarify the focused inspections and to include a reference to Rolls-Royce (RR) Alert Non-Modification Service Bulletin (NMSB) RB.211–72–AG086.

The Boeing Company asks us to change paragraph (e)(2) to include a reference to RR Alert NMSB RB.211–72–AG086. They state that guidance on full-focused inspections and acceptance limits can be found in either the current applicable RR engine manual or RR Alert NMSB RB.211–72–AG086. The Boeing Company feels that the information contained in the engine manual is not as clear or as accessible as in the RR Alert NMSB and that including the RR Alert NMSB, as an additional source of guidance, will assist the operators in conducting the associated inspections properly.

We agree. We changed paragraph (e)(2) to include a reference to RR Alert NMSB RB.211–72–AG086.

American Airlines, asks us to change paragraph (e)(1) to include a requirement for "all applicable focus inspection subtasks of the IP and HP compressor shafts * * *" American Airlines states that the Rolls-Royce Time Limits Manual and the applicable Engine Inspection Tasks do not use "full-focused inspection" terminology (as used in the NPRM). American Airlines believes that the AD terminology should be consistent with the manuals.

We agree. We changed paragraph (e)(1) to state "Perform a one-time, piece-part, full inspection, including all applicable focus inspection Subtasks, of the IP and HP compressor shafts, listed by part number and serial number in Table 1 of this AD, before exceeding the compliance period specified in Table 1 of this AD."

Conclusion

We reviewed the available data, including the comment[s] received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

Based on the service information, we estimate that this AD would affect about 12 products of U.S. registry. We also estimate that it would take about 8 work-hours per product to comply with this AD. The average labor rate is $85 per work-hour. Required parts would cost about $15,000 per product. Based on these figures, we estimate the cost of the AD on U.S. operators to be $188,160. Our cost estimate is exclusive of possible warranty coverage.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (phone (800) 647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2010–20–11 Rolls-Royce plc: Amendment 39–16446. Docket No. FAA–2010–0364; Directorate Identifier 2009–NE–27–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 29, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc model (RR) RB211 Trent 768–60, 772–60, 772B–60, 875–17, 877–17, 884–17, 884B–17, 892–17, 892B–17, and 895–17 turbofan engines that have a compressor shaft listed by part number and serial number in Table 1 of this AD. These engines are installed on, but not limited to, Airbus A330 series and Boeing 777 series airplanes.

Reason

(d) This AD results from a review of engine manual repair/acceptance limits for titanium compressor shafts by RR. We are issuing this AD to prevent failure of the intermediate-pressure (IP) and high-pressure (HP) shaft, which could result in an overspeed condition, possible uncontained disc failure and damage to the airplane.

Actions and Compliance

(e) Unless already done, do the following actions.

(1) Perform a one-time, piece-part, full inspection, including all applicable focus

inspection Subtasks, of the IP and HP compressor shafts listed by part number and serial number in Table 1 of this AD before exceeding the compliance period specified in Table 1 of this AD.

(2) Guidance on full and focused inspections and acceptance limits can be found in the current, applicable RR engine manual and RR Alert Non-Modification Service Bulletin (NMSB) RB.211–72–AG086.

TABLE 1—LIST OF AFFECTED SHAFTS

Engine series	Affected component	Part no.	Shaft serial no.	Compliance period (flight cycles in service after December 4, 2008)
Trent 800	1–8 IP Compressor Shaft	FK24100	MW0115238	750
Trent 800	1–4 HP Compressor Shaft	FK32580	MW0115512	750
Trent 800	1–4 HP Compressor Shaft	FK32580	MW0004708	2000
Trent 800	1–4 HP Compressor Shaft	FK32580	MW00063868	2500
Trent 800	1–8 IP Compressor Shaft	FK24100	DN65507	2500
Trent 800	1–8 IP Compressor Shaft	FK24100	DN65158	2500
Trent 800	1–4 HP Compressor Shaft	FK32580	MW0125467	3500
Trent 800	1–4 HP Compressor Shaft	FW11590	DN65189	3500
Trent 800	1–8 IP Compressor Shaft	FK24100	MW0091518	3500
Trent 800	1–8 IP Compressor Shaft	FK24100	MW0126365	3500
Trent 800	1–8 IP Compressor Shaft	FK24100	DN66422	4750
Trent 800	1–8 IP Compressor Shaft	FK24100	MW0203314	4750
Trent 700	1–8 IP Compressor Shaft	FK22279	DN63228	3250
Trent 700	1–8 IP Compressor Shaft	FK26048	MW0026046	4500

Other FAA AD Provisions

(f) *Alternative Methods of Compliance (AMOCs):* The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(g) Refer to MCAI EASA Airworthiness Directive 2009–0021 (Corrected February 9, 2009), dated February 6, 2009, and RR Alert NMSB RB.211–72–AG086, for related information.

(h) Contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: james.lawrence@faa.gov;* telephone (781) 238–7176; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(i) None.

Issued in Burlington, Massachusetts, on September 17, 2010.

Robert J. Ganley,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–23831 Filed 9–23–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 47

[Docket No. FAA–2008–0188; Amdt. No. 47–29A]

RIN 2120–AI89

Re-Registration and Renewal of Aircraft Registration; OMB Approval of Information Collection; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; approval of information collection; correction.

SUMMARY: The FAA is correcting the notification of the Office of Management and Budget (OMB) approval of information collection requirements contained in the "Re-Registration and Renewal of Aircraft Registration" final rule. The final rule was published on July 20, 2010. The notification of OMB approval of information collection was published on August 30, 2010. This document corrects the OMB approval expiration date referenced in the August 30, 2010, notification.

DATES: The final rule, including the information collection requirements in part 47, published July 20, 2010, at 75 FR 41968, and August 20, 2010, at 75 FR 52859, will become effective on October 1, 2010. The FAA received OMB approval for the information collection requirements on August 16, 2010.

FOR FURTHER INFORMATION CONTACT: John G. Bent, Civil Aviation Registry, Mike Monroney Aeronautical Center, 6500 South MacArthur Boulevard, Oklahoma City, OK 73169; telephone: (405) 954–4331.

SUPPLEMENTARY INFORMATION:

Background

On July 20, 2010, the FAA published the final rule "Re-Registration and Renewal of Aircraft Registration" (75 FR 41968).

The final rule contained information collection requirements in part 47 that had not yet been approved by OMB at the time of publication. In accordance with the Paperwork Reduction Act, the FAA submitted a copy of the new information collection requirements to OMB for its review. OMB approved the collection on August 16, 2010, and assigned the information collection OMB Control Number 2120–0729, which expires on February 29, 2012. In the notification of OMB approval document that was published on August 30, 2010, the FAA incorrectly stated that the expiration date was February 29, 2010. The FAA also incorrectly referenced docket number FAA–2008–0118 instead of docket number FAA–2008–0188. The FAA also inadvertently included references to parts 13 and 91 in the heading of the document; however, parts 13 and 91 did not contain information collection requirements.

In final rule FR Doc. 2010–21561 published on August 30, 2010 (75 FR 52859), make the following corrections:

Corrections to Preamble

■ 1. On page 52859, in the second column, in the third line of the heading, remove "14 CFR Parts 13, 47, and 91" and add in its place "14 CFR Part 47."

■ 2. On page 52859, in the second column, in the fourth line of the heading, remove "FAA–2008–0118" and add in its place "FAA–2008–0188."

■ 3. On page 52859, in the second column, in the fifth line of the heading, remove "13–34, 47–29, and 91–318" and add in its place "47–29."

■ 4. On page 52859, in the third column, in the second paragraph under **SUPPLEMENTARY INFORMATION**, in the twelfth line, remove "February 29, 2010" and add in its place "February 29, 2012."

Issued in Washington, DC, on September 20, 2010.

Dennis R. Pratte, II,

Acting Director, Office of Rulemaking.

[FR Doc. 2010–23964 Filed 9–23–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM10–22–000; Order No. 739]

Promoting a Competitive Market for Capacity Reassignment

September 20, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission lifts the price cap for all electric transmission customers reassigning transmission capacity based on the Commission's experience to date and a two-year study, released April 15, 2010. The removal of the price cap is intended to help facilitate the development of a market for electric transmission capacity reassignments as a competitive alternative to transmission capacity acquired directly from the transmission owner.

DATES: *Effective Date:* This rule will become effective September 24, 2010.

FOR FURTHER INFORMATION CONTACT:
Laurel Hyde (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8146.
A. Cory Lankford (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6711.

SUPPLEMENTARY INFORMATION:
Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

1. Based on the Commission's experience to date and a two-year study, released April 15, 2010,[1] the Federal Energy Regulatory Commission in this Final Rule makes permanent the lifting of price caps for transmission customers reassigning electric transmission capacity. This action is intended to facilitate the development of a market for electric transmission capacity reassignments as a competitive alternative to primary transmission capacity.

I. Background

2. In Order No. 888, the Commission concluded that a transmission provider's *pro forma* Open Access Transmission Tariff (OATT) must permit explicitly the voluntary reassignment of all or part of a holder's firm point-to-point capacity rights to any eligible customer.[2] The Commission also found that allowing holders of firm transmission capacity rights to reassign that transmission capacity would help parties manage the financial risks associated with their long-term commitment, reduce the market power of transmission providers by enabling customers to compete, and foster efficient transmission capacity allocation.

3. With respect to the appropriate rate for transmission capacity reassignment, the Commission concluded it could not permit reassignments at market-based rates because it was unable to determine that the market for reassigned transmission capacity was sufficiently competitive so that resellers would not be able to exert market power. Instead, the Commission capped the rate at the highest of: (1) The original transmission rate charged to the purchaser (assignor); (2) the transmission provider's maximum stated firm transmission rate in effect at the time of the reassignment; or (3) the assignor's own opportunity costs capped at the cost of expansion (price cap). The Commission further explained that opportunity cost pricing had been permitted at "the higher of embedded costs or legitimate and verifiable opportunity costs, but not the sum of the two (*i.e.,* 'or' pricing is

[1] *FERC Staff, Staff Findings on Capacity Reassignment (2010), available at http://www.ferc.gov* (Staff Report).

[2] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036, at 31,696 (1996), *order on reh'g,* Order No. 888–A, 62 FR 12274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (DC Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

permitted; 'and' pricing is not)." [3] In Order No. 888–A, the Commission explained that opportunity costs for transmission capacity reassigned by a customer should be measured in a manner analogous to that used to measure the transmission provider's opportunity cost.[4]

4. To foster the development of a more robust secondary market for transmission capacity, the Commission, in Order No. 890, concluded that it was appropriate to lift the price cap for all transmission customers reassigning transmission capacity.[5] The Commission stated that this would allow transmission capacity to be allocated to those entities that value it most, thereby sending more accurate price signals to identify the appropriate location for construction of new transmission facilities to reduce congestion.[6] The Commission also found that market forces, combined with the requirements of the *pro forma* OATT as modified in Order No. 890, would limit the ability of resellers, including affiliates of the transmission provider, to exert market power.

5. To enhance oversight and monitoring activities, the Commission adopted reforms to the underlying rules governing transmission capacity reassignments.[7] First, the Commission required that all resales or reassignments of transmission capacity be conducted through or otherwise posted on the transmission provider's OASIS on or before the date the reassigned service commences.[8] Second, the Commission required that assignees of transmission capacity execute a service agreement prior to the date on which the reassigned service commences.[9] Third, in addition to existing OASIS posting requirements, the Commission required transmission providers to aggregate and summarize in an electric quarterly report the data contained in these service agreements.[10]

6. The Commission also directed staff to closely monitor the reassignment-related data submitted by transmission providers in their quarterly reports to identify any problems in the development of the secondary market for transmission capacity and, in particular, the potential exercise of market power.[11] Thus, the Commission directed staff to prepare, within six months of receipt of two years of quarterly reports, a report summarizing its findings.[12] In addition, the Commission encouraged market participants to provide feedback regarding the development of the secondary electric transmission capacity market and, in particular, to contact the Commission's Enforcement Hotline if concerns arise.

7. In Order No. 890–A, the Commission affirmed its decision to remove the price cap on reassignments of electric transmission capacity but granted rehearing to limit the period during which reassignments may occur above the cap.[13] The period was limited so that the Commission could review the Staff Report to see if changes were needed based on the actual operation of the reassignment program. Accordingly, the Commission amended section 23.1 of the *pro forma* OATT to reinstate the price cap as of October 1, 2010.[14]

8. The Commission also clarified that, as of the effective date of the reforms adopted in Order No. 890, all reassignments of electric transmission capacity must take place under the terms and conditions of the transmission provider's OATT. As a result, there was no longer a need for the assigning party to have on file with the Commission a rate schedule governing reassigned capacity. To the extent that a reseller has a market-based rate tariff on file, the provisions of that tariff, including a price cap or reporting obligations, will not apply to the reassignment since such transactions no longer take place pursuant to the authorization of that tariff.

9. In Order No. 890–B, the Commission clarified that the *pro forma* OATT does not, and will not, permit the withholding of transmission capacity by the transmission provider and that it effectively establishes a price cap for long-term reassignments at the transmission provider's cost of expanding its system.[15] The Commission further found that the fact that a transmission provider's affiliate may profit from congestion on the system does not relieve the transmission provider of its obligation to offer all available transmission capacity and expand its system as necessary to accommodate requests for service.[16] The Commission pointed out that customers that do not wish to participate in the secondary market may continue to take service from the transmission provider directly, just as if the price cap had not been lifted.[17]

10. With regard to the Staff Report, the Commission clarified that staff should focus on the competitive effects of removing the price cap for reassigned electric transmission capacity.[18] The Commission stated that staff should consider the number of reassignments occurring over the study period, the magnitude and variability of resale prices, the term of the reassignments, and any relationship between resale prices and price differentials in related energy markets. In addition, the Commission directed staff to examine the nature and scope of reassignments undertaken by the transmission provider's affiliates and include in its report any evidence of abuse in the secondary market for transmission capacity, whether by those affiliates or other customers.

11. The Commission also granted rehearing and directed each transmission provider to include in its electric quarterly report the identity of the reseller and indicate whether the reseller is affiliated with the transmission provider.[19] The Commission also directed each transmission provider to include in its electric quarterly reports the rate that would have been charged under its OATT had the secondary customer purchased primary service from the transmission provider for the term of the reassignment.[20] The Commission directed transmission providers to submit this additional data for all resales during the study period and to update, as necessary, any previously-filed electric quarterly reports on or before the date they submitted their next electric quarterly reports.

12. On April 15, 2010, Commission staff published its report on the two-year study period.[21] The Staff Report took a comprehensive look at electric point-to-point transmission capacity

[3] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,740.

[4] Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,224.

[5] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, 72 FR 12266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241, at P 808 (2007), *order on reh'g,* Order No. 890–A, 73 FR 2984 (January 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299 (2008), *order on reh'g,* Order No. 890–C, 126 FERC ¶ 61,228 (2009), *order on clarification,* Order No. 890–D, 129 FERC ¶ 61,126 (2009).

[6] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 808.

[7] *Id.* P 815.

[8] *Id.*

[9] *Id.* P 816.

[10] *Id.* P 817.

[11] *Id.* P 820.

[12] *Id.*

[13] Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 at P 388, 390.

[14] *Id.* P 390.

[15] Order No. 890–B, 123 FERC ¶ 61,299 at P 78.

[16] *Id.*

[17] *Id.* P 79.

[18] *Id.* P 83.

[19] *Id.* P 84.

[20] *Id.*

[21] FERC Staff, *Staff Finding on Capacity Reassignment* (2010), *available at http://www.ferc.gov* (Staff Report).

reassignment that occurred over the period from the second quarter of 2007 through the fourth quarter of 2009. Staff examined all reported electric transmission reassignments during this period on both a national and a regional basis. These almost 35,000 transactions encompassed 65 TWh of total volume transferred. Staff looked at the data in a number of ways, in order to better understand the market and to look for evidence of abuse. In doing so, staff looked at the magnitude and variability of resale prices, and focused on trends in those numbers over time and by region. Staff compared resale prices to the maximum tariff rates that would have otherwise been in effect for those transactions. Further, staff looked at reassignments by term—hourly, daily, monthly, and yearly and looked at differences in term by transmission provider and by volume. Where the receipt and delivery points of transactions had reported price indices with sufficient data, staff compared the prices of reassignments to the energy market spread (differential in prices between the two locations) over the same time periods.

13. Staff also compared resale prices for transactions involving affiliates versus non-affiliates. Staff compared the rate of transactions above the cap for both affiliates and non-affiliates. Staff looked for additional forms of affiliate abuse such as a transmission provider providing preferential treatment in the allocation of reassigned capacity to an affiliate. Staff also checked for complaints of the abuse in affiliate transactions, as well as for capacity reassignment in general.

14. Two weeks after the release of the Staff Report, based on the Commission's experience in the natural gas transportation market and the Staff Report's conclusion that the secondary market had grown substantially and that resale prices reflected market fundamentals rather than the exercise of market power, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to lift the price cap for all electric transmission customers reassigning transmission capacity beyond October 1, 2010. In addition, the Commission proposed to direct transmission providers to submit corresponding revisions to their OATTs within 30 days of publication of the Final Rule in the **Federal Register**. The Commission also sought comment as to whether there are any other reforms that it should undertake to create a more efficient and vibrant secondary market for electric transmission capacity. In response to these NOPR proposals, the Commission received comments from 13 parties, which are addressed below.[22]

II. Discussion

A. Removal of the Price Cap

1. Comments

15. Several commenters support the Commission's proposal to remove the price cap on transmission reassignments permanently.[23] They contend that removal of the cap will encourage the development of a more robust secondary market, resulting in appropriate price signals and an efficient allocation of transmission capacity. Cargill comments that the resale of transmission capacity at negotiated rates is consistent with other Commission reforms in favor of market-based pricing.

16. Despite their general support for the Commission's proposal, EPSA and PG&E raise concerns about the staff study and the need for transparency. EPSA states that the Staff Report shows some gaps that will require further analysis; such as limited numbers of transmission providers reported and the majority of transactions being from Bonneville. PG&E expresses a lingering concern about the potential for transmission service providers to raise power prices in locations where there is insufficient competition. EPSA and PG&E urge the Commission to continue to monitor the capacity reassignment market as it matures so that the Commission will be informed and therefore able to direct necessary reforms to the market, as the needed reforms reveal themselves. EPSA further urges the Commission to look at ways of increasing transparency for transmission capacity available for reassignments as a way of promoting the secondary market for reassignment. Powerex comments that there are already a number of safeguards including requirements that transmission providers report reassignments on their systems on OASIS and in the electronic quarterly reports (EQR) that should help limit abuses. Similarly, Seattle comments that reconciliation of EQRs, audits, and OASIS transactions would go a long way to ensure that resale markets are functioning without affiliate abuse.

17. Bonneville agrees that lifting the price cap on transmission capacity reassignments appears to support the goal of a more robust secondary market for that capacity but asks the Commission to recognize the position of non-jurisdictional entities, such as itself. Bonneville contends that non-jurisdictional entities may have to place conditions upon the removal of the cap in order to obtain reciprocity and comply with their applicable statutory requirements. Bonneville contends that if its administrator determines that behavior associated with transmission capacity reassignments is occurring on its system in a manner that frustrates or is otherwise inconsistent with the administrator's statutory requirements to make all excess capacity available to utilities on a fair and nondiscriminatory basis, the administrator must be able to act promptly to stop that behavior. Thus, Bonneville suggests that any revision to section 23 of Bonneville's OATT permanently lifting the price cap must be conditioned upon the administrator's express authority to carry out this mandate including the right to reinstate the cap expeditiously if necessary.

18. Other commenters argue against removal of the price cap, contending that staff's two-year study provides insufficient evidence to support a finding that the secondary market is sufficiently competitive to lift the price caps or that market forces or other factors will be effective to adequately protect consumers.[24] These commenters point out that, although the Final Rule would apply to an estimated 132 public utilities, the Staff Report included data from only 26 with 79 percent of the reported transactions coming from Bonneville. These commenters also point out that the study was performed during a recession with concomitant reductions in the demand for electricity, and that Bonneville is atypical, given that it is dependent on large hydroelectric projects. APPA further comments that because there were so few sales made during the study period by affiliates above the rate cap, it would appear that reinstitution of the cap would not significantly dampen resales of capacity by affiliates of transmission providers.

19. TAPS states that the staff study did not examine both prices offered and accepted such that the Commission could determine the level of market interest in reassigned capacity, whether prices increased, the cause of price changes, and whether those prices remained in the zone of reasonableness. It notes that the staff study compared resale prices during the study period to the tariff rate, but not to the opportunity cost cap, which is likely higher. It argues that accordingly, the study does not show that the price cap constrained

[22] A list of commenters is provided in Appendix A.

[23] *E.g.* Bonneville, Cargill, EPSA, FIEG, PG&E, PGE, Powerex, Seattle.

[24] *E.g.* APPA, NRECA, SCE, TAPS, Outland, and TDU Systems.

any prices, and thus it prevents a finding that the price cap is unjust and unreasonable. SCE requests that the Commission reconcile its proposal with findings in the Staff Report that removal of the price cap does not appear to be primarily responsible for the observed growth in the secondary market. It also states that the Staff Report did not definitively conclude that there was not abuse by resellers, even in a period with very low demand and no supply scarcity. SCE states that this is not sufficient evidence to lift the price cap. APPA, SCE and TAPS suggest that, if the Commission wishes to lift the price cap, it should only do so as a continuation of the experiment.

20. NRECA, TAPS, and TDU Systems argue that the Staff Report does not provide a sufficient factual basis for the Commission to conclude that the OATT section 23.1, which reinstates the price cap on October 1, 2010, is unjust and unreasonable or to conclude that proposed revision is just and reasonable. Moreover, TAPS and TDU Systems comment that market-based reassignment of transmission capacity should not be available to entities to the extent they lack market-based rate authority in the area in which the transmission reservation is located. TDU Systems states that each secondary transmission capacity market should be looked at individually, and that there is no single, national market for secondary transmission capacity rights. It questions why the Staff Report considers Public Service of New Hampshire (PSNH) to be an aberration, while the nearby Central Vermont Public Service Corporation (Central Vermont) system is presented as representing national trends.

21. TAPS and TDU Systems further contend that, to permit market-based rates, the Commission remains bound by the requirement that market-based rates be supported by empirical proof that existing competition would ensure that the actual price is just and reasonable.[25] TDU Systems comments that courts have held that undocumented reliance on market forces is insufficient grounds for authorizing market-based rates.[26] Moreover, TAPS and TDU Systems argue that the Commission has a requirement to make an *ex ante* finding of the absence of market power and sufficient post-approval requirements.[27] SCE agrees that the Commission should engage in an *ex ante* competitive analysis to find that the transmission reseller lacks market power, or take sufficient steps to mitigate market power, as well as adopt sufficient post-approval reporting requirements.

22. Outland states that the pilot project has allowed resellers to acquire capacity "for pennies and then hold up the first renewable energy generator that comes along looking to use it." [28] It states that parties acquire transmission when they do not need it for a real generation project, to the detriment of real projects.

23. NRECA, TAPS, and TDU Systems urge the Commission, at a minimum, to retain the price cap on transmission capacity reassignments for transmission provider affiliates and retail/merchant functions. TAPS states that the pattern of affiliate pricing reveals more about corporate strategy selected by a few corporate entities and general conditions during an atypical period, than confirming the Commission's assumption that the rates for primary capacity or competition in the reassignment market will restrain prices. It states that assuming that the customer may always take service from the transmission provider directly is cold comfort if the available capacity has been assigned to the transmission provider's affiliate. NRECA states that a larger portion of affiliate than non-affiliate transactions occurred over the cap, and points to the PSNH system where all reported transactions originated with an affiliate and occurred over the price cap.

24. In its supplemental comments, Powerex expresses concern that Bonneville might reinstate the price cap as of October 1, 2010, regardless of Commission action in this proceeding. Powerex asks the Commission to address the possible adverse consequences of non-jurisdictional transmission providers reinstating price caps on transmission reassignments and to provide guidance to customers seeking to reassign transmission on the systems of non-jurisdictional transmission providers that elect not to adopt any reforms the Commission directs. To address this issue, Powerex requests the Commission to clarify that its seller-specific market-based rate schedule for transmission reassignment remains operative. Alternatively, Powerex seeks guidance on how to price capacity reassignments based on the customer's opportunity cost capped at the transmission provider's cost of expansion.

2. Commission Determination

a. Removal of the Price Cap

25. The Commission hereby adopts its NOPR proposal to lift the price cap for all reassignments of electric transmission capacity to become effective October 1, 2010. Removal of the price cap will help foster the development of a more robust secondary market for transmission capacity because point-to-point transmission service customers will have increased incentives to resell their service whenever others place a higher value on it. Existing transmission, therefore, may be put to better, more efficient use.

26. Moreover, removal of the price cap will promote the efficient construction of new capacity. Prices serve as signals indicating where capacity shortages exist and where potentially profitable construction can take place. The Commission has previously addressed the need for new transmission and established incentives for its construction.[29] Removing the price cap on sales of secondary electric transmission capacity is one way to create the proper incentives for new transmission investment in this industry. Areas with congestion tend to have higher prices and thus signal the need for investment.[30] However, if prices for reassigned capacity exceed the cost of construction of new transmission, the customer could request service from the transmission provider which would support investment in new transmission and lower costs prospectively by relieving constrained transmission capacity. Thus, the price of reassigned capacity will remain effectively capped at the cost of new transmission. We therefore reaffirm the Commission's finding in Order No. 890–A that removal of the price cap for reassigned capacity will help establish a competitive market for secondary transmission capacity that will send more accurate signals and that such price signals will promote more efficient use of the electric transmission system.[31]

27. Our continued regulatory oversight will also limit the potential for the exercise of market power. We are

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[25] *Citing Farmers Union Cent. Exch., Inc.* v. *FERC*, 734 F.2d 1486, 1510 (DC Cir. 1984)(*Farmers Union*).

[26] *Citing Transwestern Pipeline,* 43 FERC ¶ 61,240, at 61,250 (1988).

[27] *Citing California ex. Rel. Lockyer* v. *FERC,* 383 F.3d 1006, 1013 (9th Cir. 2004).

[28] Outland at 1.

[29] *Promoting Transmission Investment through Pricing Reform,* Order No. 679, 71 FR 43294 (July 31, 2006), FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g,* Order No. 679–A, 72 FR 1152 (January 10, 2007), FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g,* 119 FERC ¶ 61,062 (2007).

[30] *See Interstate Nat'l Gas Ass'n of America* v. *FERC,* 285 F.3d 18, 32–34 (DC Cir. 2002) (*INGAA*) ("[B]rief spikes in moments of extreme exigency are completely consistent with competition, reflecting scarcity rather than monopoly.").

[31] Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 at P 388.

not deregulating or otherwise adopting market-based rates for the provision of transmission service under the *pro forma* OATT. Transmission providers will continue to be obligated to offer available transfer capability to customers, including available transfer capability associated with purchased but unused capacity. Transmission providers also will continue to be obligated to construct new facilities to satisfy requests for service if those requests cannot be satisfied using existing capacity. Furthermore, the rates for transmission service provided under the *pro forma* OATT will continue to be determined on a cost-of-service basis unless the transmission provider can demonstrate, on a case-specific basis, that it lacks market power. Nothing in this Final Rule affects the obligations of transmission providers to offer service under the *pro forma* OATT at cost-based rates. The availability of firm and non-firm service from transmission providers, therefore, will limit the ability of reassignors to exercise market power. In *INGAA,* the Court of Appeals for the District of Columbia Circuit recognized that the maintenance of regulated rates for primary service would protect against the potential for the exercise of market power in the capacity release market.[32]

28. The Commission disagrees with suggestions that affiliates of the transmission provider be treated differently than non-affiliated customers with respect to reassignments of transmission capacity. The Commission's Standards of Conduct are designed to prevent the transmission provider and its affiliate from acting in concert to exercise market power.[33] Commenters did not identify any affiliate concerns that these obligations, along with the monitoring discussed below, would not address.

29. The Commission takes seriously the possibility that resellers may attempt to exercise market power in the secondary market for transmission. We continue to find, however, that the regulatory protections in place and our increased oversight of this market will limit the potential for market power abuse. Prices for secondary transmission capacity may rise above prices for primary transmission capacity but this alone does not indicate an abuse of market power. On the contrary, courts have recognized that prices in a competitive market should rise during periods when capacity is truly scarce in order to ensure that transmission capacity is being allocated appropriately.[34] Nevertheless, the Commission will continue to monitor the secondary transmission capacity market to ensure that participants are not exercising market power.[35] The Commission also will monitor for abuse by transmission providers in concert with their affiliates. If a customer has evidence of an exercise of market power or other abuse, it should bring the matter to the Commission's attention through a complaint or other appropriate procedural mechanism. Absent such evidence, the Commission concludes that the continued rate regulation of the primary market for electric transmission capacity and the transmission provider's obligation to expand its system to accommodate service requests adequately mitigates any market power that resellers may have in the long-term secondary market.

30. The Staff Report did not raise any concerns with removal of the price cap that would warrant its reimposition given the regulatory protections and increased market oversight discussed above. The report included a comprehensive examination of the assignments that took place during the study period which included both the period prior to the economic downturn starting in September 2008 and the period after the downturn. Although the Staff Report did not conclusively demonstrate that the price cap inhibited the growth of the secondary market, the data showed a marked growth in reassignments, with both the number of transactions and the volume increasing during the two and one half year time span. The number of reassignments grew from just over 200 in 2007 to almost 32,000 in 2009. During this same period, the volume reassigned grew from 3 TWh to 36 TWh.

31. The data do not suggest the exercise of market power. The prices during the test period appear consistent with pricing differentials between locational markets, indicating that the transactions reflect market fundamentals, not the exercise of market power.[36] Moreover, the Staff Report found that 99 percent of reassignments were priced at or below the transmission provider's maximum firm transmission rate, an indication that prices reflect market conditions and competition rather than the exercise of market power.[37] The brief spikes above the price cap are consistent with a competitive market, indicating scarcity rather than market power.[38]

32. We disagree with comments suggesting that the Staff Report does not provide enough evidence to support a finding that the market is sufficiently competitive to lift the price cap because it relied on data from a limited number of transmission providers. While capacity reassignments occurred on a limited number of transmission systems, the lack of data for other transmission providers indicates a lack of reassignments on those systems, not an exercise of market power or lack of potential competition for capacity reassignment. Where reassignment is currently non-existent or occurring at a lower level, potential reassignment of transmission in these areas, should it develop, would face competition associated with transmission that can be acquired from other customers. Such reassignment also would compete with capacity available from the transmission provider. Although the data in the Staff Report included extensive data from Bonneville and Central Vermont, the greater number of such assignments may be due to differences in market dynamics (such as the extensive use of hydroelectric power in the Bonneville region) or reporting conventions (in the case of Central Vermont).[39] It also may

[32] 285 F.3d at 32 ("[i]f holders of firm capacity do not use or sell all of their entitlement, the pipelines are required to sell the idle capacity as interruptible service to any taker at no more than the maximum rate—which is still applicable to the pipelines"); *see also, Promotion of a More Efficient Capacity Release Market,* Order No. 712, 73 FR 37058 (June 30, 2008), FERC Stats. & Regs. ¶ 31,271, at P48–49 (2008), *order on reh'g,* Order No. 712–A, FERC Stats. & Regs. ¶ 31,284 (2008).

[33] *See Standards of Conduct for Transmission Providers,* Order No. 717, 73 FR 63796 (October 27, 2008), FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g,* Order No. 717–A, 74 FR 54463 (October 22, 2009), FERC Stats. & Regs. ¶ 31,297 (2009), *order on reh'g,* Order No. 717–B, 129 FERC ¶ 61,123 (2009), *order on reh'g,* Order No. 717–C, 131 FERC ¶ 61,045 (2010). The Commission's Standards of Conduct establish that a transmission provider must (1) treat all customers, affiliated and non-affiliated, on a not unduly discriminatory basis, (2) not make or grant any undue preference or advantage to any person, and (3) not subject any person to any undue prejudice or disadvantage with respect to transmission of electric energy. This would include avoiding undue prejudice or disadvantage in the initial allocation of capacity to affiliates, thereby allowing those affiliates to gain market power and then to exercise it when reassigning capacity.

[34] *INGAA*, 285 F.3d at 32–34 ("[B]rief spikes in moments of extreme exigency are completely consistent with competition, reflecting scarcity rather than monopoly.").

[35] *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 815.

[36] *See INGAA,* 285 F.3d at 31 (indicating that differentials in prices between receipt and delivery points are indicative of the value of the transportation between those points).

[37] Because 99 percent of the prices were below the tariff rate, these prices are almost certainly lower than opportunity costs which TAPS suggests are likely higher than the tariff rate.

[38] *INGAA,* 285 F.3d 18, 32 ("A surge in the price of candles during a power outage is no evidence of monopoly in the candle market").

[39] The Staff Report states that "the large number of [Central Vermont] transactions may be due, in part, to reporting conventions. For EQR reporting

Continued

indicate that capacity reassignment is more developed in those areas. The volume of capacity reassignments on these two systems provides an example of what may be possible in other areas of the country. As for arguments that the time period under review was atypical due to the economic downturn and, thus, not representative, we note that study began the second quarter of 2007, well before the downturn began.

33. The Staff Report also did not show evidence of affiliate abuse. Ninety-nine percent of reassignments by affiliates of the transmission provider were at or below the transmission provider's maximum rate. The percentage of such reassignments over the maximum firm transmission rate by affiliates was comparable to that by non-affiliates (0.5 percent versus 0.4 percent).

34. While it is true, as some of the commenters point out, that the reassignment transactions were limited to certain areas and utilities, we see no reason to expect different results as capacity reassignment expands. There have not been allegations of the exercise of market power in reassignment markets, and commenters do not provide any data to suggest that market power may be more prevalent as capacity reassignment increases on other transmission systems. Development of a more robust reassignment market in areas where reassignments are not prevalent should raise, rather than lower, the level of competition in markets. Moreover, we will continue to monitor the market and if anomalies develop in certain areas, they can be addressed.

35. We disagree with the comments that a market power study or other empirical competition analyses are required to lift the price cap on transmission capacity reassignments. Contrary to commenters' assertions, market power analyses are not the only method to ensure that market-based rates remain just and reasonable.[40] In *INGAA,*[41] the DC Circuit affirmed the Commission's removal of price ceilings for short-term capacity releases by shippers in the natural gas market without requiring sellers to submit market power analyses. The court recognized that non-cost factors such as the need to facilitate movement of capacity into the hands of those who value it most may also justify the removal of price ceilings. The court concluded that these non-cost factors, combined with the limitation of negotiated rates to the secondary market, distinguished the case from *Farmers Union* in which the court had reversed a Commission determination to implement lighthanded regulation of the oil industry.[42]

36. *Farmers Union* itself did not require a market power study to support a move to a more market-based regulatory regime. The court found that rates should be within a "zone of reasonableness, where [they] are neither less than compensatory nor excessive."[43] Moreover, the court found that the Commission could justify a move to a more market-based focus "by a showing that under circumstances the goals and purposes of [the Commission's statutory mandate] will be accomplished through substantially less regulatory oversight."[44] Here, the Commission is relying on competition in the market for transmission capacity, together with the regulatory protections discussed above, to ensure just and reasonable rates. Protections, such as continuing rate regulation of the transmission provider's primary capacity, retention of the requirement for transmission owners to build additional capacity at cost-based rates, competition among resellers, reforms to the secondary market for transmission capacity, and reporting requirements combined with enforcement proceedings, audits, and other regulatory controls, will assure that prices in the secondary market for electric transmission capacity remain within a zone of reasonableness.[45]

b. Implementation of the Requirement

37. Because the current OATTs reinstate the price cap as of October 1, 2010, transmission providers will need to revise section 23 of the *pro forma* OATT, as indicated in Appendix B. We direct transmission providers to file these changes within 30 days from publication of this Final Rule in the **Federal Register.** Bonneville requests a blanket waiver of the requirement for non-jurisdictional entities that are unable to satisfy reciprocity conditions with regard to the reassignment of transmission capacity. Whether the particular terms and conditions of a non-jurisdictional transmission provider's reciprocity tariff satisfy the Commission's open access principles must be determined on a case-by-case basis. Therefore, the Commission denies, without prejudice, Bonneville's request for a blanket waiver.

38. We find Powerex's concern that Bonneville will reinstate the price cap as of October 1, 2010 to be premature, since Bonneville has not made a final decision at this point. Moreover, when Bonneville submitted its tariff revisions pursuant to Order No. 890, it declined to adopt certain *pro forma* provisions related to the reassignment of transmission capacity and several transmission customers within Bonneville, including Powerex, filed stand-alone rate schedules allowing them to sell transmission capacity above the price cap.[46] These customers may submit any necessary revisions to their rate schedules before October 1, 2010 and request waiver of the prior notice requirement, if they find such action to be necessary and appropriate.

B. Non-Rate Reforms To Promote Secondary Market

1. NOPR Proposal

39. In the NOPR, the Commission sought comment as to whether there are any reforms, other than removal of the price cap, that it should undertake to create a more efficient and vibrant secondary market for transmission capacity. The Commission asked if there are non-price limitations or regional factors that may be continuing to limit the utility of reassignment. By way of an example, the Commission asked if there

purposes, each line of data is counted as one transaction." *See* Staff Report at 4.

[40] *See Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines,* 74 FERC ¶ 61,076, at 61,227–36 (1996). The Commission ultimately determined in that case that a market power analysis was required in order to allow a pipeline to use market-based pricing instead of cost-of-service rates. The Commission has not proposed to allow transmission providers to engage in sales of primary capacity at market-based rates and, as explained below, sufficient protections exist to ensure the secondary market for transmission capacity remains sufficiently competitive without requiring market power analyses from each reseller.

[41] *Interstate Nat'l Gas Ass'n of American* v. *FERC,* 285 F.3d at 33 (DC Cir. 2002).

[42] *Interstate Nat'l Gas Ass'n of America* v. *FERC,* 285 F.3d 18 at 31–34 (DC Cir. 2002), *order on remand,* 101 FERC ¶ 61,127 (2002), *order on reh'g,* 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n* v. *FERC,* 428 F.3d 255 (DC Cir. 2005).

[43] *Farmers Union,* 734 F.2d at 1502; *see also, INGAA,* 285 F.3d at 31.

[44] *Farmers Union,* 734 F.2d at 1510.

[45] *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 811; *see also* Order No. 712, 73 FR 37058 (June 30, 2008), FERC Stats. & Regs. ¶ 31,271 at P 39 (2008), *order on reh'g,* Order No. 712–A, FERC Stats. & Regs. ¶ 31,284 (2008), *aff'd sub nom. Interstate Natural Gas Ass'n of America,* No. 09–1016 (DC Cir. Aug. 13, 2010).

[46] *See Portland General Electric Co.*, Docket No. ER09–93–000 (Dec. 3, 2008) (unpublished letter order); *Idaho Power Co.*, Docket No. ER09–524–000 (Mar. 5, 2009) (unpublished letter order); *Puget Sound Energy, Inc.*, Docket No. ER09–528–000 (Mar. 5, 2009) (unpublished letter order); *Avista Corp.*, ER09–729–000 (May 12, 2009) (unpublished letter order); *PacifiCorp*, Docket No. ER09–921–001 (Sept. 29, 2009) (unpublished letter order); *Powerex Corp.*, Docket No. ER09–926–000 (May 21, 2009) (unpublished letter order).

are reforms to the redirect process that would enable all firm customers to use their firm capacity more flexibly and thereby facilitate capacity reassignment by making point changes by the buyer of reassigned capacity more efficient.

2. Comments

40. Although FIEG supports the Commission's proposal to allow redirects of reassigned capacity, several other commenters raise concerns. Powerex admits that the ability to modify receipt and delivery points of reassigned capacity may make the capacity more attractive to a potential third-party assignee but warns that this practice would erode the priority that firm capacity should be accorded. NRECA expresses similar concern that this proposal may give higher priority to point-to-point customers who wish to redirect by awarding them service over those non-firm customers who do not redirect and over secondary network customers. APPA contends that any reforms to firm point-to-point service proposed to increase the attractiveness of re-sales of firm point-to-point capacity would have to be carefully assessed to ensure that they do not result in a degradation of the quality of network integration transmission service. TAPS and TDU Systems urge the Commission to not use a narrowly focused rulemaking to implement a sweeping change to point-to-point transmission service.

41. Commenters offered suggestions about various other reforms as well. Bonneville and Seattle argue that requiring transmission providers to act as financial intermediaries in capacity reassignments imposes an undue burden and complicates settlements. Powerex and Bonneville raise concerns about transmission providers failing to recalculate available transfer capability or available flowgate capability in a timely manner, thereby inhibiting reassignments. Bonneville recommends that a firm redirect request receive a credit for any available flowgate capability the parent reservation has on the flowgates impacted by the firm redirect request. TAPS suggests that the Commission require the posting of transmission capacity available for reassignment on the transmission provider's OASIS. Cargill recommends that the reseller not remain responsible or liable to the transmission provider for the reassigned capacity if it is a complete reassignment (the full quantity of capacity for the remainder of the reservation) or if the reseller performs a long-term assignment of the reservation for any quantity up to the full amount of the capacity of the reservation.

42. Seattle advocates a transition from comma separated data to structured XML data in order to enhance data exchange and validation between "front-end" and "back-end systems" used by transmission customers and providers. It also advocates more meaningful forms of transaction umbrella agreements, such as the WSPP agreement. EPSA advocates consistent rules about posting the entities and market participants that have active umbrella agreements with the transmission provider. It says that such postings would give competitive suppliers transparency about which market participants can purchase reassigned capacity.

3. Commission Determination

43. The Commission declines to implement the non-rate reforms proposed in this proceeding at this time. Although some of these proposals may have merit, we are unable to make a determination that they are appropriate at this time based on the record in this proceeding. With respect to the issues raised by Seattle and EPSA regarding data structures, such issues are best addressed through the standards development process of the North American Energy Standards Board, which sets voluntary wholesale electric market standards including those related to data exchanges and posting requirements.

III. Information Collection Statement

44. The following collection of information contained in this proposed rule is subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[47] OMB's regulations require OMB to approve certain information collection requirements imposed by agency rule.[48]

Burden Estimate: The public reporting and records retention burdens for the reporting requirements and the records retention requirement are as follows.[49] The Commission solicited comments on the need for this information and did not receive any specific comments regarding its burden estimates. Where commenters raised concerns that specific information collection requirements would be burdensome to implement, the Commission has addressed those concerns elsewhere in the rule.

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
Conforming tariff changes	132	1	10	1,320

Cost To Comply: $150,480

1,320 hours @ $114 an hour (average cost of attorney ($200 per hour), consultant ($150), technical ($80), and administrative support ($25))

OMB's regulations require it to approve certain information collection requirements imposed by an agency rule. The Commission is submitting a copy of this Final Rule to OMB for their review approval of the information collection requirements.

Title: FERC–516, Electric Rate Schedules and Tariff Filings; FERC–717 Standards for Business Practices and Communication Protocols for Public Utilities.

Action: Collection

OMB Control Nos. 1902–0096 and 1902–0173

Respondents: Transmission Providers

Frequency of responses: One time.

Necessity of the Information:

45. The Federal Energy Regulatory Commission is adopting amendments to the *pro forma* OATT to ensure that transmission services are provided on a basis that is just, reasonable and not unduly discriminatory or preferential. The purpose of this rulemaking is to strengthen the *pro forma* OATT by encouraging more robust competition. The Final Rule achieves this goal by removing the price cap previously imposed on reassignments of transmission capacity.

46. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, [Attention: Michael Miller, Office of the Executive

[47] 44 U.S.C. 3507(d) (2006).

[48] 5 CFR 1320.11 (2010).

[49] These burden estimates apply only to this Final Rule and do not reflect upon all of FERC–516 or FERC–717.

Director, Phone: (202) 502–8415, fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov.*]

47. For submitting comments concerning the collections of information and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4638, fax: (202) 395–7285. Due to security concerns, comments should be sent electronically to the following e-mail address: *oira_submission@omb.eop.gov.* Please reference the docket number of this rulemaking in your submission.

IV. Environmental Analysis

48. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[50] The Commission concludes that neither an Environmental Assessment nor an Environmental Impact Statement is required for this Final Rule under section 380.4(a)(15) of the Commission's regulations, which provides a categorical exemption for approval of actions under sections 205 and 206 of the Federal Power Act (FPA) relating to the filing of schedules containing all rates and charges for the transmission or sale subject to the Commission's jurisdiction, plus the classification, practices, contracts and regulations that affect rates, charges, classifications and services.[51]

V. Regulatory Flexibility Act

49. The Regulatory Flexibility Act of 1980 (RFA) [52] generally requires a description and analysis of Final Rules that will have significant economic impact on a substantial number of small entities. This Final Rule applies to public utilities that own, control, or operate interstate transmission facilities, not to electric utilities per se. The total number of public utilities that, absent waiver, would have to modify their current OATTs by filing the revised *pro forma* OATT is 176.[53] Of these only six public utilities, or less than two percent, dispose of four million MWh or less per year.[54] The Commission does not consider this a substantial number, and in any event, these small entities may seek waiver of these requirements.[55] Moreover, the criteria for waiver that would be applied under this rulemaking for small entities is unchanged from that used to evaluate requests for waiver under Order Nos. 888 and 889. Thus, small entities who have received waiver of the requirements to have on file an open access tariff or to operate an OASIS would be unaffected by the requirements of this proposed rulemaking.

VI. Document Availability

50. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

51. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

52. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

VII. Effective Date and Congressional Notification

53. These regulations shall become effective September 24, 2010. Section 553(d) of the Administrative Procedure Act (APA) generally requires a rule to be effective not less than 30 days after publication in the **Federal Register** unless, *inter alia,* the rule relieves a restriction or good cause is otherwise found to shorten the time period.[56] Section 553(b)(B) of the APA authorizes agencies to dispense with certain procedures when the agency, for good cause, finds that those procedures are "impracticable, unnecessary, or contrary to public interest." [57] For the following reasons the Commission is using the "Good Cause" exemption. This Final Rule must become effective by 12 a.m. on October 1, 2010 or the price cap on reassignments of electric transmission capacity will be reinstated. Reinstating the price cap would impose a restriction on the rights of transmission customers. Thus, this Final Rule relieves a restriction. Furthermore, the Commission finds that good cause exists to make this Final Rule effective immediately because allowing the price cap to be reinstated temporarily could disrupt the efficient management of the secondary market for electric transmission capacity and reduce opportunities for further reduction of transmission congestion.

54. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 35

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Note: The following Appendices will not appear in the Code of Federal Regulations.

BILLING CODE 6717–01–P

[50] *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897 (December 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[51] 18 CFR 380.4(a)(15) (2010).

[52] 5 U.S.C. 601–612 (2006).

[53] The sources for this figure are FERC Form No. 1 and FERC Form No. 1–F data.

[54] *Id.*

[55] The Regulatory Flexibility Act defines a "small entity" as "one which is independently owned and operated and which is not dominant in its field of operation." *See* 5 U.S.C. 601(3) and 601(6)(2000); 15 U.S.C. 632(a)(1) (2000). In *Mid-Tex Elec. Coop.* v. *FERC,* 773 F.2d 327, 340–343 (DC Cir. 1985), the court accepted the Commission's conclusion that, since virtually all of the public utilities that it regulates do not fall within the meaning of the term "small entities" as defined in the Regulatory Flexibility Act, the Commission did not need to prepare a regulatory flexibility analysis in connection with its proposed rule governing the allocation of costs for construction work in progress (CWIP). The CWIP rules applied to all public utilities. The revised *pro forma* OATT will apply only to those public utilities that own, control or operate interstate transmission facilities. These entities are a subset of the group of public utilities found not to require preparation of a regulatory flexibility analysis for the CWIP rule.

[56] 5 U.S.C. 553(d) (2006).

[57] 5 U.S.C. 553(b)(B) (2006).

Appendix A

List of Commenters

Commenter Name	Abbreviation
American Public Power Association	APPA
Bonneville Power Administration	Bonneville
Cargill Power Markets, LLC	Cargill
Electric Power Supply Association	EPSA
Financial Institutions Energy Group	FIEG
National Rural Electric Cooperative Association	NRECA
Outland Renewable Energy LLC	Outland
Pacific Gas & Electric Co.	PG&E
Portland General Electric Co.	PGE
Powerex Corp.	Powerex
Southern California Edison Co.	SCE
Seattle City Light	Seattle
Transmission Access Policy Study Group	TAPS
Transmission Dependent Utility Systems	TDU Systems

Appendix B

RM05-17-001, -002 & RM05-25-001, -002
(Issued)

PRO FORMA OPEN ACCESS
TRANSMISSION TARIFF

23 Sale or Assignment of Transmission Service

23.1 Procedures for Assignment or Transfer of Service:

(a) ~~Subject to Commission approval of any necessary filings, a~~A Transmission Customer may sell, assign, or transfer all or a portion of its rights under its Service Agreement, but only to another Eligible Customer (the Assignee). The Transmission Customer that sells, assigns or transfers its rights under its Service Agreement is hereafter referred to as the Reseller. ~~Compensation to Resellers shall not exceed the higher of (i) the original rate paid by the Reseller, (ii) the Transmission Provider's maximum rate on file at the time of the assignment, or (iii) the Reseller's opportunity cost capped at the Transmission Provider's cost of expansion; provided that, for service prior to October 1, 2010, c~~Compensation to Resellers shall be at rates established by agreement between the Reseller and the Assignee.

(b) The Assignee must execute a service agreement with the Transmission Provider governing reassignments of transmission service prior to the date on which the reassigned service commences. The Transmission Provider shall charge the Reseller, as appropriate, at the rate stated in the Reseller's Service

Agreement with the Transmission Provider or the associated OASIS schedule and credit the Reseller with the price reflected in the Assignee's Service Agreement with the Transmission Provider or the associated OASIS schedule; provided that, such credit shall be reversed in the event of non-payment by the Assignee. If the Assignee does not request any change in the Point(s) of Receipt or the Point(s) of Delivery, or a change in any other term or condition set forth in the original Service Agreement, the Assignee will receive the same services as did the Reseller and the priority of service for the Assignee will be the same as that of the Reseller. The Assignee will be subject to all terms and conditions of this Tariff. If the Assignee requests a change in service, the reservation priority of service will be determined by the Transmission Provider pursuant to Section 13.2.

[FR Doc. 2010–23836 Filed 9–23–10; 8:45 am]

BILLING CODE 6717–01–C

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that certain vessels of the PC–1 Class are vessels of the Navy which, due to their special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with their special functions as naval ships. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective September 24, 2010 and is applicable beginning September 8, 2010.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Ted Cook, JAGC, U.S. Navy, Admiralty Attorney, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone number: 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that certain vessels of the PC–1 Class are vessels of the Navy which, due to their special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with their special function as naval ships: Rule 21(a) pertaining to the arc of visibility of a masthead light. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, the DoN amends part 706 of title 32 of the CFR as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended in Table Three by removing the entry for USS

Zephyr and revising the following entries for the PC–1 Class to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE THREE

Vessel	No.	Masthead lights arc of visibility; rule 21(a)	Side lights arc of visibility; rule 21(b)	Stern light arc of visibility; rule 21(c)	Side lights distance inboard of ship's sides in meters 3(b) annex 1	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; 2(K) annex 1	Anchor lights relationship of aft light to forward light in meters 2(K) annex 1
*	*	*	*	*	*	*		
USS TEMPEST	PC 2	([2])				[1] 28.3	3.0	1.1 below.
USS HURRICANE	PC 3	([2])				[1] 28.5	3.0	1.1 below.
USS MONSOON	PC 4	([2])				[1] 28.3	3.0	1.1 below.
USS TYPHOON	PC 5	([2])				[1] 28.5	3.0	1.1 below.
USS SIROCCO	PC 6	([2])				[1] 28.5	3.0	1.1 below.
USS SQUALL	PC 7	([2])				[1] 28.5	3.0	1.1 below.
USS CHINOOK	PC 9	([2])				[1] 28.5	3.0	1.1 below.
USS FIREBOLT	PC 10	([2])				[1] 28.5	3.0	1.1 below.
USS WHIRLWIND	PC 11	([2])				[1] 28.5	3.0	1.1 below.
USS THUNDERBOLT	PC 12	([2])				[1] 28.5	3.0	1.1 below.
*	*	*	*	*	*	*		

[1] Only when towing

[2] Lower forward masthead light (used for towing) is partially blocked at angles plus or minus 8.5 degrees off centerline; this light is used only when tow exceeds 200 meters from the stern of the ship to aft end of tow.

Approved: September 8, 2010.

M. Robb Hyde,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

[FR Doc. 2010–23749 Filed 9–23–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 3

[Docket No. USCG–2010–0351]

RIN 1625–ZA25

Navigation and Navigable Waters; Technical, Organizational, and Conforming Amendments, Sector Puget Sound, WA; Correction

AGENCY: Coast Guard, DHS.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard published in the **Federal Register** of August 5, 2010, a document concerning non-substantive changes to Title 33 Parts 3 and 165 of the Code of Federal Regulations. That publication contained an error in amendatory instruction 2 and its regulatory text for part 3. This document corrects this error.

DATES: This correction is effective September 24, 2010.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lt. Matthew Jones, Coast Guard; telephone 206–220–7110, e-mail *Matthew.m.jones@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: In FR doc 2010–19326 appearing on page 47212 in the issue of Thursday, August 5, 2010, the following correction is made:

1. On page 47212, in the second column, revise amendatory instruction number 2 to read as follows:

"Revise § 3.65–10 to read as follows:

§ 3.65–10 Sector Puget Sound Marine Inspection Zone and Captain of the Port Zone.

Sector Puget Sound's office is located in Seattle, WA. The boundaries of Sector Puget Sound's Marine Inspection and Captain of the Port Zones start at latitude 48°29′35″ N, longitude 124°43′45″ W, proceeding along the Canadian border east to the Montana-North Dakota boundary; thence south along this boundary to the Wyoming state line; thence west and south along the Montana-Wyoming boundary to the Idaho state line; thence northwest along the Montana-Idaho boundary to latitude 46°55′00″ N; thence west along latitude 46°55′00″ N to longitude 123°18′00″ W; thence north to a point latitude 47°32′00″ N, longitude 123°18′00″ W; thence west along latitude 47°32′00″ N to the outermost extent of the EEZ; thence northeast along the outermost extent of the EEZ to the Canadian border; thence east along the Canadian border to the point of origin."

Dated: September 21, 2010.

Sandra Selman,

CDR, USCG, Acting Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. 2010–24015 Filed 9–23–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0823]

RIN 1625–AA00

Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Navy Pier Southeast Safety Zone in

Chicago Harbor from September 18, 2010 through October 30, 2010. This action is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after fireworks events. This rule will establish restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after fireworks events. During the enforcement period, no person or vessel may enter the safety zones without permission of the Captain of the Port, Sector Lake Michigan.

DATES: The regulations in 33 CFR 165.931 are enforced from 8:45 p.m. on September 18, 2010 until 9:15 p.m. on October 30, 2010.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail BM1 Adam Kraft, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at 414–747–7154, e-mail *Adam.D.Kraft@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL, 33 CFR 165.931 for the following events:

(1) *Navy Pier Fireworks;* on September 18, 2010 from 8:45 p.m. through 9:15 p.m.; on September 25, 2010 from 8:45 p.m. through 9:15 p.m.; on October 2, 2010 from 8:45 p.m. through 9:15 p.m.; on October 9, 2010 from 8:45 p.m. through 9:15 p.m.; on October 16, 2010 from 8:45 p.m. through 9:15 p.m.; on October 23, 2010 from 8:45 p.m. through 9:15 p.m.; on October 30, 2010 from 8:45 p.m. through 9:15 p.m.

All vessels must obtain permission from the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative to enter, move within or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.931 Safety Zone, Chicago Harbor, Navy Pier Southeast, Chicago, IL and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port, Sector Lake Michigan, will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. If the Captain of the Port, Sector Lake Michigan, determines that the safety zone need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone. The Captain of the Port, Sector Lake Michigan, or his or her on-scene representative may be contacted via VHF Channel 16.

Dated: September 13, 2010.

L. Barndt,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2010–23890 Filed 9–23–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN 171; FRL–9200–1]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Revised Format for Materials Being Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Administrative change.

SUMMARY: EPA is revising the format of its regulations for materials submitted by the State of Indiana that have been incorporated by reference (IBR) into its State Implementation Plan (SIP). The regulations and other materials affected by this format change have all been previously submitted by Indiana and approved by EPA as SIP revisions.

DATES: *Effective Date:* This final rule is effective on September 24, 2010.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR Part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604; the Air and Radiation Docket and Information Center, EPA Headquarters Library, Infoterra Room (Room Number 3334), EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460, and the National Archives and Records Administration. If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number: (202) 566–1742. For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

Table of Contents

I. Background

A. Description of a SIP

Each State has a SIP containing the control measures and strategies to attain and maintain the National Ambient Air Quality Standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring networks, attainment demonstrations, and enforcement mechanisms.

B. How EPA Enforces SIPs

Before formally adopting required control measures and strategies, each State must provide the public with an opportunity to comment on them. The States then submit them to EPA as requested SIP revisions on which EPA must formally act.

If and when these control measures and strategies are approved by EPA, after notice and comment rulemaking, they are incorporated into the Federally approved SIP and identified in title 40 of the Code of Federal Regulations, part 52 (Approval and Promulgation of Implementation Plans) (40 CFR part 52). The actual State regulations approved by EPA are not reproduced in their entirety in 40 CFR part 52, but are "incorporated by reference," which means that EPA has approved a given State regulation with a specific effective date. This format allows both EPA and the public to know which measures are contained in a given SIP and to help determine whether the State is enforcing the regulations.

C. How the State and EPA Update the SIP

The SIP is periodically revised as necessary to address the unique air pollution problems in the State. Therefore, EPA from time to time takes action on State SIP submissions containing new and/or revised regulations and other materials; if approved, they become part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR).

As a result, EPA began the process of developing the following: (1) A revised SIP document for each State that would be incorporated by reference under the provisions of title 1 CFR part 51; (2) a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR; and (3) a revised format of the "Identification of plan" sections for each applicable subpart to reflect these revised IBR procedures. The description of the revised SIP document, IBR procedures, and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document.

D. How EPA Compiles the SIP

The Federally approved regulations, source-specific requirements, and nonregulatory provisions (entirely or portions of) submitted by each State agency and approved by EPA have been organized into a "SIP compilation." The compilation is contained in three-ring binders and will be updated, primarily on an annual basis. The Indiana SIP compilation is available at the Environmental Protection Agency, Region 5 office: 77 West Jackson Boulevard, Chicago, Illinois 60604; (312) 886–2395.

E. How EPA Organizes the SIP Compilation

Each SIP compilation contains three parts approved by EPA: Part one contains regulations, part two contains source-specific requirements, and part three contains nonregulatory provisions. Each State's SIP compilation contains a table of identifying information for each of these three parts. In this action, EPA is publishing the tables summarizing the applicable SIP requirements for Indiana. The effective dates in the tables indicate the date of the most recent revision of each regulation. The EPA Region 5 Office has the primary responsibility for updating the compilation and ensuring its accuracy.

F. Where You Can Find a Copy of the SIP Compilation

EPA's Region 5 Office developed and will maintain the compilation for Indiana. A copy of the full text of Indiana's regulatory and source-specific compilations will also be maintained at NARA and EPA's Air Docket and Information Center.

G. The Format of the New Identification of Plan Section

In order to better serve the public, EPA revised the organization of the "Identification of plan" section and included additional information to clarify which provisions are the enforceable elements of the SIP.

The revised Identification of plan section contains five subsections: (a) Purpose and scope, (b) Incorporation by reference, (c) EPA-approved regulations, (d) EPA-approved source-specific requirements, and (e) EPA-approved nonregulatory provisions such as transportation control measures, statutes, control strategies, and monitoring networks.

H. When a State Submission Becomes Part of the SIP and Federally Enforceable

All revisions to the applicable SIP become Federally enforceable as of the effective date of the revisions to paragraphs (c), (d), or (e) of the applicable Identification of plan section found in each subpart of 40 CFR part 52.

I. The Historical Record of SIP Revision Approvals

To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP compilation, EPA has retained the original Identification of plan section, previously appearing in the CFR as the first or second section of part 52 for each State subpart. After an initial two-year period, EPA will review its experience with the new table format and will decide whether or not to retain the Identification of plan appendices for some further period.

II. What is EPA doing in this action?

Today's rule constitutes a record keeping exercise to ensure that all revisions to the State programs and accompanying SIP that have already occurred are accurately reflected in 40 CFR part 52. State SIP revisions are controlled by EPA regulations at 40 CFR part 51. When EPA receives a formal SIP revision request, the Agency must publish proposed rulemaking in the **Federal Register** and provide for public comment before approval.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately, thereby avoiding the 30-day delayed effective date otherwise provided for in the APA. Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Accordingly, we find that public comment is "unnecessary" and "contrary to the public interest" under section 553 of the APA, since the codification of the revised format for denoting IBR of the State materials into the SIP only reflects existing law and since immediate notice in the CFR benefits the public by removing outdated citations from the CFR.

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a significant regulatory action and is therefore not subject to review by the Office of Management and Budget. This rule is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the agency has made a good cause finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This rule does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rules are discussed in previous actions taken on the State's rules.

B. Submission to Congress and the Comptroller General

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. Today's action simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of September 24, 2010. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Indiana SIP compilation had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for these "Identification of plan" reorganization actions for Indiana.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 12, 2010.

Susan Hedman,

Regional Administrator, Region 5.

■ Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

■ 1. The authority for citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

§ 52.770 [Redesignated as § 52.800]

■ 2. Section 52.770 is redesignated as § 52.800 and the section heading and paragraph (a) are revised to read as follows:

§ 52.800 Original identification of plan section.

(a) This section identifies the original "Air Implementation Plan for the State of Indiana" and all revisions submitted by Indiana that were Federally approved prior to December 31, 2009.

* * * * *

■ 3. A new § 52.770 is added to read as follows:

§ 52.770 Identification of plan.

(a) *Purpose and scope.* This section sets forth the applicable State Implementation Plan (SIP) for Indiana under section 110 of the Clean Air Act, 42 U.S.C. 7401, and 40 CFR Part 51 to meet National Ambient Air Quality Standards.

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c), (d), and (e) of this section with an EPA approval date prior to December 31, 2009, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register.** Entries in paragraphs (c), (d), and (e) of this section with an EPA approval date after December 31, 2009, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 5 certifies that the rules/regulations provided by the EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the SIP as of December 31, 2009.

(3) Copies of the materials incorporated by reference may be inspected at the Environmental Protection Agency, Region 5, Air Programs Branch, 77 West Jackson Boulevard, Chicago, IL 60604; the EPA, Air and Radiation Docket and Information Center, EPA Headquarters Library, Infoterra Room (Room Number 3334), EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460, and the National Archives and Records Administration. If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number: (202) 566–1742. For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(c) EPA approved regulations.

EPA-APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
Article 1. General Provisions				
1–1	Provisions Applicable Throughout Title 326		2/18/1982, 47 FR 6622	Sec. 4 and 5.
		6/24/1994	7/21/1997, 62 FR 38919	Sec. 2.
		3/16/2005	10/19/2005, 70 FR 60735	Sec. 6.
		7/31/2009	11/20/2009, 74 FR 60197	Sec. 3.
1–2	Definitions	9/26/1980	11/5/1981, 46 FR 54943	Sec. 1, 3, 5, 6, 7, 8, 9, 10, 11, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 50, 51, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 91.
		5/18/1990	3/6/1992, 57 FR 8082	Sec. 18.5, 21.5, 29.5, 29.6, 49.5.
		6/5/1991	3/6/1992, 57 FR 8082	Sec. 14.
		6/11/1993	6/15/1995, 60 FR 31412	Sec. 32.1, 34.1, 62.1, 63.1, 63.2.
		1/21/1995	7/5/1995, 60 FR 34856	Sec. 22.5, 28.5, 64.1.
		6/24/1994	7/21/1997, 62 FR 38919	Sec. 2, 4, 12, 33.1, 33.2.
		1/19/2005	10/19/2005, 70 FR 60735	Sec. 52, 52.2, 52.4, 82.5.
		5/26/2007	3/18/2008, 73 FR 14389	Sec. 48 and 90.
1–3	Ambient Air Quality Standards		11/27/1981, 46 FR 57895	Sec. 1, 2, and 3.
		4/5/2006	10/31/2006, 71 FR 63699	Sec. 4.
1–5	Episode Alert Levels		5/31/1972, 37 FR 10842.	
1–6	Malfunctions	3/15/1984	5/3/1990, 55 FR 18604	Sec. 2 to 6.
		6/24/1994	7/21/1997, 62 FR 38919	Sec. 1.
1–7	Stack Height Provisions	8/27/1980	3/12/1982, 47 FR 10824.	
Article 2. Permit Review Rules				
2–1.1	General Provisions	6/26/1999	6/27/2003, 68 FR 38197	Sec. 6, 8.
		9/10/2004	6/18/2007, 72 FR 33395	Sec. 7.
		12/16/2007	10/6/2009, 74 FR 51240	Sec. 9.5.
2–2	Prevention of Significant Deterioration (PSD) Requirements.	4/22/2001	6/27/2003, 68 FR 38197	Sec. 10, 11, 13, 15, 16.
		4/8/2004	5/20/2004, 69 FR 29071	Sec. 1(m), 1(ll) and Sec. 12.
		9/10/2004	6/18/2007, 72 FR 33395	Sec. 1(a)–(l), (n)–(kk), (mm)–(tt), (uu)(1)–(4), (vv)–(aaa); 2(a)–(d)(4), (d)(6)–(e), (g)–(i); 3; 4; 5(a), (c)–(e); 6; 8;.
2–2.4	Actual Plantwide Applicability Limitations in Attainment Areas.	9/10/2004	6/18/2007, 72 FR 33395.	
2–3	Emission Offset	12/13/1993	10/7/1994, 59 FR 51108	Sec. 4 and 5.
		9/10/2004	6/18/2007, 72 FR 33395	Sec. 1(a)–(i), (k)–(ff), (hh)–(uu); 2(a)–(c)(4), (c)(6)–(k), (m); 3(a)–(b)(11), (b)(14).
2–3.4	Actual Plantwide Applicability Limitations in Nonattainment Areas.	9/10/2004	6/18/2007, 72 FR 33395.	
2–5.1.	Construction of New Sources	9/10/2004	6/18/2007, 72 FR 33395	Sec. 4.
2–6	Emission Reporting	3/27/2004	10/29/2004, 69 FR 63069	Sec. 2, 5.
		8/13/2006	3/29/2007, 72 FR 14678	Sec 1, 3, 4.
2–8	Federally Enforceable State Operating Permit Program.	6/24/1994	8/18/1995, 60 FR 43008	Sec. 1 to 17 except 4.
		12/16/2007	10/6/2009, 74 FR 51240	Sec. 4.
2–9	Source Specific Operating Agreement Program	6/24/1994	4/2/1996, 61 FR 14487	Sec. 1, 2(a), 2(b), and 2(e).
Article 3. Monitoring Requirements				
3–1	Continuous Monitoring of Emissions		9/4/1981, 46 FR 44448	Sec. 1.
3–2.1	Source Sampling Procedures	7/15/1995	4/9/1996, 61 FR 15704	Sec. 5.
3–5	Continuous Monitoring of Emissions	3/1/1998	12/28/2009, 74 FR 68541	Sec. 1.
Article 4. Burning Regulations				
4–1	Open Burning		6/22/1978, 43 FR 26722	Sec. 4 and 5.

EPA-APPROVED INDIANA REGULATIONS—Continued

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
		8/25/1982	5/18/1983, 48 FR 22294	Sec. 0.5 and 2.
		6/23/1995	2/1/1996, 61 FR 3581	Sec. 3.
4–2	Incinerators	12/15/2002	11/30/2004, 69 FR 69531.	
	Article 5. Opacity Regulations			
5–1	Opacity Limitations	6/11/1993	6/15/1995, 60 FR 31412	Sec. 4(a), 5(a), 5(c), 7.
		11/8/1998	7/16/2002, 67 FR 46589	Sec. 1, 2, 3, 4(b), 5(b).
	Article 6. Particulate Rules			
6–2	Particulate Emission Limitations for Sources of Indirect Heating.	10/21/1983	5/17/1985, 50 FR 20569.	
6–3	Particulate Emission Limitations for Manufacturing Processes.	6/12/2002	7/25/2005, 70 FR 42495.	
6–4	Fugitive Dust Emissions	11/16/1973	10/28/1975, 40 FR 50032.	
6–7	Particulate Matter Emissions Limitations for Southern Indiana Gas and Electric Company.	8/30/2008	11/10/2009, 74 FR 57904	Sec. 1.
	Article 6.5. Particulate Matter Limitations Except Lake County			
6.5–1	General Provisions	9/9/2005	3/22/2006, 71 FR 14383.	
6.5–2	Clark County	2/22/2008	4/30/2008, 73 FR 23356.	
6.5–3	Dearborn County	2/22/2008	4/30/2008, 73 FR 23356.	
6.5–4	Dubois County	2/22/2008	4/30/2008, 73 FR 23356.	
6.5–5	Howard County	2/22/2008	4/30/2008, 73 FR 23356.	
6.5–6	Marion County	2/22/2008	4/30/2008, 73 FR 23356.	
6.5–7	St. Joseph County	2/22/2008	4/30/2008, 73 FR 23356.	
6.5–8	Vanderburgh County	2/22/2008	4/30/2008, 73 FR 23356.	
6.5–9	Vigo County	2/22/2008	4/30/2008, 73 FR 23356.	
6.5–10	Wayne County	2/22/2008	4/30/2008, 73 FR 23356.	
	Article 6.8. Particulate Matter Limitations for Lake County			
6.8–1	General Provisions	9/9/2005	3/22/2006, 71 FR 14383	Sec. 1.5, 2, 3, 4, 6.
		2/22/2008	4/30/2008, 73 FR 23356	Sec. 1, 5, 7.
6.8–2	Lake County: PM_{10} Emission Requirements	2/22/2008	4/30/2008, 73 FR 23356.	
6.8–3	Lake County: Opacity Limits; Exceptions to 326 IAC 5–1–2.	2/22/2008	4/30/2008, 73 FR 23356.	
6.8–4	Lake County: Opacity Limits; Test Methods	2/22/2008	4/30/2008, 73 FR 23356.	
6.8–5	Lake County: Opacity Continuous Emissions Monitors.	2/22/2008	4/30/2008, 73 FR 23356	Repealed.
6.8–6	Lake County: Combustion Sources; Natural Gas.	2/22/2008	4/30/2008, 73 FR 23356.	
6.8–7	Lake County: Site-Specific Control Requirements.	2/22/2008	4/30/2008, 73 FR 23356.	
6.8–8	Lake County: Continuous Compliance Plan	9/9/2005	3/22/2006, 71 FR 14383	Sec. 2 to 8.
		2/22/2008	4/30/2008, 73 FR 23356	Sec. 1.
6.8–9	Lake County: PM_{10} Coke Battery Emission Requirements.	9/9/2005	3/22/2006, 71 FR 14383	Sec. 1 and 2.
		2/22/2008	4/30/2008, 73 FR 23356	Sec. 3.
6.8–10	Lake County: Fugitive Particulate Matter	9/9/2005	3/22/2006, 71 FR 14383	Sec. 2, 3, 4.
		2/22/2008	4/30/2008, 73 FR 23356	Sec. 1.
6.8–11	Lake County: Particulate Matter Contingency Measures.	9/9/2005	3/22/2006, 71 FR 14383.	
	Article 7. Sulfur Dioxide Rules			
7–1.1	Sulfur Dioxide Emission Limitations	6/24/2005	9/26/2005, 70 FR 56129.	
7–2	Compliance	6/24/2005	9/26/2005, 70 FR 56129.	
7–3	Ambient Monitoring		5/13/1982, 47 FR 20583	Sec. 2.
7–4	Emission Limitations and Requirements by County.	4/10/1988	9/1/1988, 53 FR 33808	Sec. 4 to 7, 9.
		5/13/1988	12/16/1988, 53 FR 50521	Sec. 11.
		4/10/1988	1/19/1989, 54 FR 2112	Sec. 8.
		10/23/1988	1/19/1989, 54 FR 2112	Sec. 14.
		12/5/1990	9/19/1994, 59 FR 47804	Sec. 12.1.
		3/11/1999	8/2/2000, 65 FR 47336	Sec. 2.
		6/12/1999	8/29/2000, 65 FR 52315	Sec. 1.1.
		9/30/2004	2/28/2005, 70 FR 9533	Sec. 3.
		3/16/2005	2/28/2006, 71 FR 9936	Sec. 13.

EPA-APPROVED INDIANA REGULATIONS—Continued

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
		8/30/2008	11/10/2009, 74 FR 57904	Sec. 10.
7–4.1	Lake County Sulfur Dioxide Emission Limitations.	6/24/2005	9/26/2005, 70 FR 56129.	
Article 8. Volatile Organic Compound Rules				
8–1	General Provisions		10/27/1982, 47 FR 20586	Sec. 7.
		1/14/1986	9/4/1987, 52 FR 33590	Sec. 3.
		11/10/1988	9/6/1990, 55 FR 36635	Sec. 5.
		6/5/1991	3/6/1992, 57 FR 8082	Sec. 1.
		5/22/1997	6/29/1998, 63 FR 35141	Sec. 9, 10, 11, 12.
		10/18/1995	11/3/1999, 64 FR 59642	Sec. 0.5.
		7/15/2001	9/11/2002, 67 FR 57515	Sec. 4.
		12/15/2002	5/5/2003, 68 FR 23604	Sec. 2.
		6/24/2006	6/13/2007, 72 FR 32531	Sec. 6.
8–2	Surface Coating Emission Limitations		10/27/1982, 47 FR 20586	Sec. 4, 6, 7, 8.
			1/18/1983, 48 FR 2124	Sec. 10.
			2/10/1986, 51 FR 4912	Sec. 2 and 3.
		4/10/1988	11/24/1990, 55 FR 39141	Sec. 12.
		2/15/1990	3/6/1992, 57 FR 8082	Sec. 5.
		6/5/1991	3/6/1992, 57 FR 8082	Sec. 1.
		10/23/1988	3/6/1992, 57 FR 8082	Sec. 11.
		12/15/2002	7/21/2003, 68 FR 42978	Sec. 9.
8–3	Organic Solvent Degreasing Operations		10/27/1982, 47 FR 47554	Sec. 2, 3, 4.
		6/5/1991	3/6/1992, 57 FR 8082	Sec. 5, 6, 7.
		5/27/1999	9/14/2001, 66 FR 47887	Sec. 1, 8.
8–4	Petroleum Sources		1/18/1983, 48 FR 2127	Sec. 2, 4, 5.
			2/10/1986, 51 FR 4912	Sec. 3.
		6/5/1991	3/6/1992, 57 FR 8082	Sec. 8.
		10/18/1995	11/3/1999, 64 FR 59642	Sec. 6.
		5/23/1999	12/20/1999, 64 FR 71031	Sec. 1(c).
		11/5/1999	5/31/2002, 67 FR 38006	Sec. 7, 9.
8–5	Miscellaneous Operations		1/18/1983, 48 FR 2124	Sec. 4.
			2/10/1986, 51 FR 4912	Sec. 2.
		5/18/1990	3/6/1992, 57 FR 8082	Sec. 3.
		5/22/1997	6/29/1998, 63 FR 35141	Sec. 5.
		3/22/2007	2/20/2008, 73 FR 9201	Sec. 1 and 6.
8–6	Organic Solvent Emission Limitations		1/18/1983, 48 FR 2124.	
8–7	Specific VOC Reduction Requirements for Lake, Porter, Clark, and Floyd Counties.	1/21/1995	7/5/1995, 60 FR 34856.	
8–8	Municipal Solid Waste Landfills Located in Clark, Floyd, Lake, and Porter Counties.	1/18/1996	1/17/1997, 62 FR 2591.	
8–9	Volatile Organic Liquid Storage Vessels	1/18/1996	1/17/1997, 62 FR 2593.	
8–10	Automobile Refinishing	11/2/1995	6/13/1996, 61 FR 29965	Sec. 2, 4, 7, 8.
		5/23/1999	12/20/1999, 64 FR 71031	Sec. 3.
		8/13/1998	12/20/1999, 64 FR 71031	Sec. 1, 5, 6, 9.
8–11	Wood Furniture Coating	1/4/1996	10/30/1996, 61 FR 55889.	
8–12	Shipbuilding or Ship Repair Operations in Clark, Floyd, Lake, and Porter Counties.	5/1/1996	1/22/1997, 62 FR 3216	Sec. 1, 3.
		7/15/2001	4/1/2003, 68 FR 15664	Sec. 2, 4, 5, 6, 7.
8–13	Sinter Plants	7/24/1998	7/5/2000, 65 FR 41350.	
Article 9. Carbon Monoxide Emission Rules				
9–1	Carbon Monoxide Emission Limits	12/15/2002	11/30/2004, 69 FR 69531.	
Article 10. Nitrogen Oxides Rules				
10–1	Nitrogen Oxides Control in Clark and Floyd Counties.	6/12/1996	6/3/1997, 62 FR 30253.	
10–3	Nitrogen Oxide Reduction Program for Specific Source Categories.	9/16/2001	11/8/2001, 66 FR 56465	Sec. 2, 4, 5, 6.
		8/6/2003	12/11/2003, 68 FR 69025	Sec. 1.
		2/26/2006	10/1/2007, 72 FR 55664	Sec. 3.
10–4	Nitrogen Oxides Budget Trading Program	9/16/2001	11/8/2001, 66 FR 56465	Sec. 4, 5, 6, 7, 8, 11, 12.
		8/6/2003	12/11/2003, 68 FR 69025	Sec. 10.
		2/26/2006	10/1/2007, 72 FR 55664	Sec. 1, 2, 3, 9, 13, 14, 15.
10–5	Nitrogen Oxide Reduction Program for Internal Combustion Engines (ICE).	2/26/2006	10/1/2007, 72 FR 55664.	

EPA-APPROVED INDIANA REGULATIONS—Continued

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
10–6	Nitrogen Oxides Emissions Limitations for Southern Indiana Gas and Electric Company.	8/30/2008	11/10/2009, 74 FR 57904	Sec. 1.
Article 11. Emission Limitations for Specific Types of Operations				
11–1	Existing Foundries	7/25/1968	5/31/1972, 37 FR 10863.	
11–3	Coke Oven Batteries	9/26/1980	12/1/1983, 48 FR 54615	Sec. 1, 3, 5.
		6/11/1993	6/15/1995, 60 FR 31412	Sec. 2(a)–(f), 2(i), 4.
11–4	Fiberglass Insulation Manufacturing	9/26/1980	4/3/1984, 49 FR 13144	Sec. 1, 2, 3, 4.
		9/27/2002	12/9/2002, 67 FR 72844	Sec. 5.
11–5	Fluoride Emission Limitations for Existing Primary Aluminum Plants.	2/6/1981	11/27/1981, 46 FR 57892.	
Article 13. Motor Vehicle Emission and Fuel Standards				
13–1.1	Motor Vehicle Inspection and Maintenance Requirements.	1/22/1999	9/27/2001, 66 FR 49297.	
13–3	Control of Gasoline Reid Vapor Pressure	12/15/2002	7/21/2003, 68 FR 42978	Sec. 1.
		8/5/1995	2/9/1996, 61 FR 4895	Sec. 2 to 7.
Article 14. Emission Standards for Hazardous Air Pollutants				
14–1	General Provisions	5/13/1988	9/17/1992, 57 FR 42889.	
14–8	Emission Standard for Equipment Leaks (Fugitive Emission Sources).	5/13/1988	9/17/1992, 57 FR 42889.	
14–9	Emission Limitations for Benzene from Furnace Coke Oven By-Product Recovery Plants.	5/13/1988	9/17/1992, 57 FR 42889.	
Article 15. Lead Rules				
15–1	Lead Emission Limitations	7/14/1989	8/17/1989, 54 FR 33894	Sec. 1 and 4.
		4/27/1994	5/3/1995, 60 FR 21717	Sec. 2(a)(1)–(a)(6), (a)(8)–(b).
		2/5/1999	12/28/1999, 64 FR 72561	Sec. 2(a)(7)(A)–(G).
		12/31/2000	1/15/2008, 73 FR 2428	Sec. 2(c) and 3.
Article 16. State Environmental Policy				
16–3	General Conformity	7/6/1996	1/14/1998, 63 FR 2146	Sec. 1.
Article 19. Mobile Source Rules				
19–3	Clean Fuel Fleet Vehicles	1/18/1996	3/21/1996, 61 FR 11552.	
Article 20. Hazardous Air Pollutants				
20–10	Bulk Gasoline Distribution Facilities	11/4/1999	5/31/2002, 67 FR 38006.	
20–13	Secondary Lead Smelters	12/31/2000	1/15/2008, 73 FR 2428	Sec. 1(c), 2(a), and 6.
Article 24. Trading Programs: Nitrogen Oxides (NO_X) and Sulfur Dioxide (SO_2)				
24–1	Clean Air Interstate Rule Nitrogen Oxides Annual Trading Program.	2/25/2007	10/22/2007, 72 FR 59480	Sec. 2(36), 2(38), 2(60), 8, 12.
24–2	Clean Air Interstate Rule (CAIR) Sulfur Dioxide Trading Program.	2/25/2007	10/22/2007, 72 FR 59480	Sec. 11.
24–3	Clean Air Interstate Rule (CAIR) NO_X Ozone Season Trading Program.	2/25/2007	10/22/2007, 72 FR 59480	Sec. 1, 2(38), 2(49), 2(61), 8, 12.

(d) EPA approved State source-specific requirements.

EPA-APPROVED INDIANA SOURCE-SPECIFIC PROVISIONS

CO date	Title	SIP rule	EPA approval	Explanation
10/1/1999	ALCOA-Warrick	5–1–2	7/5/2000, 65 FR 41352 (*also see* 64 FR 40287).	Alt. opacity limits (permit).
12/15/1999	ALCOA-Warrick	5–1–2	7/5/2000, 65 FR 41352 (*also see* 64 FR 40287).	Alt. opacity limits (permit).

EPA-APPROVED INDIANA SOURCE-SPECIFIC PROVISIONS—Continued

CO date	Title	SIP rule	EPA approval	Explanation
10/12/1999	Crane Naval	8–2–9	12/31/2002, 67 FR 79859	Exemption.
2/11/2004	Eli Lilly	8–5–3	11/8/2004, 69 FR 64661	Exemption.
12/22/2004	Transwheel	8–3–5(a)(5)(C)	4/12/2005, 70 FR 19000	Equivalent control.

(e) EPA approved nonregulatory and quasi-regulatory provisions.

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
Carbon Monoxide Control Strategy—Lake and Porter Co		1/19/2000, 65 FR 2883	Paragraph (b).
Carbon Monoxide Control Strategy—Lake and Marion Cos	[1] 1/12/2009	10/15/2009, 74 FR 52891	Paragraph (c).
Chicago Hydrocarbon Control Strategy		8/26/2004, 69 FR 52427	Paragraph (aa).
Chicago-Gary Hydrocarbon Control Strategy		12/30/2008, 73 FR 79652	Paragraph (kk).
Control Strategy: Particulate Matter		11/27/2009, 74 FR 62243	Paragraph (s).
Evansville Hydrocarbon Control Strategy		12/29/2005, 70 FR 77026	Paragraph (ee).
Fluoride Emission Limitations for Existing Primary Aluminum Plants.		3/11/2003, 68 FR 11472	Removed from SIP, replaced by NESHAP.
Fort Wayne Hydrocarbon Control Strategy		1/11/2007, 72 FR 1292	Paragraph (ff).
Greene and Jackson Counties Hydrocarbon Control Strategy		11/14/2005, 70 FR 69085	Paragraph (bb).
Indianapolis Hydrocarbon Control Strategy		10/19/2007, 72 FR 59210	Paragraph (jj).
LaPorte Hydrocarbon Control Strategy		7/19/2007, 72 FR 39574	Paragraph (gg).
Lead Control Strategy—Marion County		5/10/2000, 65 FR 29959	Paragraph (d).
Lead Control Strategy—Marion County	[1] 4/1/2009	9/24/2009, 74 FR 48659	Paragraph (e).
Louisville Hydrocarbon Control Strategy		9/20/2004, 69 FR 56171	Paragraph (z).
Louisville Hydrocarbon Control Strategy		7/19/2007, 72 FR 39571	Paragraph (ii).
Muncie Hydrocarbon Control Strategy		11/16/2005, 70 FR 69443	Paragraph (cc).
Ozone Monitoring Season	2/19/1991	12/10/1991, 56 FR 64482.	
PM_{10} Maintenance Plan for Lake County	9/25/2002	1/10/2003, 68 FR 1370	Paragraph (r), also redesignation.
Particulate Control Strategy—Vermillion County		8/26/1997, 62 FR 45168	Paragraph (q).
Small Business Compliance Assistance Program		9/2/1993, 58 FR 46541.	
South Bend-Elkhart Hydrocarbon Control Strategy		7/19/2007, 72 FR 39577	Paragraph (hh).
Sulfur Dioxide Control Strategy—LaPorte, Marion, Vigo, and Wayne Counties.		11/15/1996, 61 FR 58482	Paragraph (f) and (g).
Terre Haute Hydrocarbon Control Strategy		1/5/2006, 71 FR 541	Paragraph (dd).

[FR Doc. 2010–23802 Filed 9–23–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2010–0477; FRL–9204–5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Michigan; Redesignation of the Allegan County Areas to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving Michigan's request to redesignate the Allegan County, Michigan nonattainment area to attainment for the 1997 8-hour ozone standard because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA). The Michigan Department of Natural Resources and Environment (MDNRE) submitted this request on May 12, 2010, and supplemented it on June 16, 2010.

This approval involves several related actions. EPA is making a determination under the CAA that the Allegan County area has attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based on three years of complete, quality-assured and certified ambient air quality monitoring data for the 2007–2009 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the area. Preliminary data available for 2010 is consistent with continued attainment. EPA is also approving, as a revision to the Michigan State Implementation Plan (SIP), the State's plan for maintaining the 8-hour ozone NAAQS through 2021 in the area. EPA is approving the 2005 emissions inventory submitted with the redesignation request as meeting the comprehensive emissions inventory requirement of the CAA for the Allegan County area. Finally, EPA found adequate and is approving the State's 2021 Motor Vehicle Emission Budgets (MVEBs) for the Allegan County area.

DATES: This final rule is effective September 24, 2010.

ADDRESSES: EPA has established a docket for this action: Docket ID No. EPA–R05–OAR–2010–0477. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from

8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886–1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:

Kathleen D'Agostino, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

Table of Contents

I. What is the background for these actions?

The background for today's actions is discussed in detail in EPA's July 20, 2010, proposal (75 FR 42018). In that rulemaking, we noted that, under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm. (See 69 FR 23857 (April 30, 2004) for further information.) Under the CAA, EPA may redesignate nonattainment areas to attainment if sufficient complete, quality-assured data are available to determine that the area has attained the standard and if it meets the other CAA redesignation requirements in section 107(d)(3)(E).

The MDNRE submitted a request to redesignate the Allegan County area to attainment for the 1997 8-hour ozone standard on May 12, 2010, and supplemented it on June 16, 2010. The redesignation request is based on three years of complete, quality-assured, certified data for the period of 2007 through 2009, indicating the 8-hour NAAQS for ozone, as promulgated in 1997, has been attained in the Allegan County area. Preliminary monitoring data available for 2010 is consistent with continued attainment. The July 20, 2010, proposed rule provides a detailed discussion of how Michigan met this and other CAA requirements.

II. What comments did we receive on the proposed rule?

EPA provided a 30-day review and comment period. The comment period closed on August 19, 2010. EPA received comments in support of the redesignation from Consumers Energy. EPA received no adverse comments on the proposed rule.

III. What action is EPA taking?

EPA is making a determination that the Allegan County area has attained the 1997 8-hour ozone NAAQS. EPA is also approving the maintenance plan SIP revisions for the Allegan County area. EPA's approval of the maintenance plan is based on the State's demonstration that the plan meets the requirements of section 175A of the CAA. After evaluating the redesignation requests submitted by MDNRE, EPA believes that the request meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. Therefore, EPA is approving the redesignation of the Allegan County area from nonattainment to attainment for the 1997 8-hour ozone NAAQS. EPA is also approving MDNRE's 2005 base year emissions inventory for the Allegan County area as meeting the requirements of section 172(c)(3) of the CAA. Finally, EPA has found adequate and is approving Michigan's 2021 MVEBs for the Allegan County area.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction," and section 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the state of various requirements for this 8-hour ozone nonattainment area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective on the date of publication of this action.

IV. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. These actions do not impose additional requirements beyond those imposed by state law and the CAA. For that reason, these actions:

- Are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on the tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone NAAQS in tribal lands. However, because there are tribal lands located in Allegan County, we provided the affected tribe with the opportunity to consult with EPA on the redesignation. The affected tribe raised no concerns with the proposed rule.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 23, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Dated: September 11, 2010.

Susan Hedman,

Regional Administrator, Region 5.

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart X—Michigan

■ 2. Section 52.1174 is amended by adding paragraphs (aa) and (bb) to read as follows:

§ 52.1174 Control strategy: Ozone.

* * * * *

(aa) Approval—On May 12, 2010, Michigan submitted 2005 VOC and NO_X base year emissions inventories for the Allegan County area. Michigan's 2005 inventories satisfy the base year emissions inventory requirements of section 172(c)(3) of the Clean Air Act for the Allegan County area under the 1997 8-hour ozone standard.

(bb) Approval—Michigan submitted a request to redesignate the Allegan County area to attainment of the 1997 8-hour ozone standard on May 12, 2010, and supplemented the submittal on June 16, 2010. As part of the redesignation request, the State submitted a maintenance plan as required by section 175A of the Clean Air Act. Elements of the section 175 maintenance plan include a contingency plan and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. The ozone maintenance plan also establishes 2021 Motor Vehicle Emission Budgets (MVEBs) for the area. The 2021 MVEBs for the Allegan County area is 3.93 tons per day (tpd) for VOC and 6.92 tpd for NO_X.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 81.323 is amended by revising the entry for Allegan Co., MI in the table entitled "Michigan-Ozone (8-Hour Standard)" to read as follows:

§ 81.323 Michigan.

* * * * *

MICHIGAN—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [1]	Type
*	*	*	*	*
Allegan County, MI:				
Allegan County	September 24, 2010	Attainment.		
*	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

* * * * *

[FR Doc. 2010–23708 Filed 9–23–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2009–0312; SW FRL–9206–8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Direct Final Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is proposing to grant a petition submitted by Eastman Chemical Company-Texas Operations (Eastman) to exclude (or delist) certain solid wastes generated by its Longview, Texas, facility from the lists of hazardous wastes. EPA used the Delisting Risk Assessment Software (DRAS) Version 3.0 in the evaluation of the impact of the petitioned waste on human health and the environment.

DATES: This rule is effective on November 23, 2010 without further notice, unless EPA receives relevant adverse comment by October 25, 2010. If adverse comment is received, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–RCRA–2009–0312 by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: peace.michelle@epa.gov.*

3. *Mail:* Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–C, 1445 Ross Avenue, Dallas, TX 75202.

4. *Hand Delivery or Courier.* Deliver your comments to: Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–C, 1445 Ross Avenue, Dallas, TX 75202.

Instructions: Direct your comments to Docket ID No. EPA–R06–RCRA–2009–0312. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, RCRA Branch, 1445 Ross Avenue, Dallas, TX 75202. The hard copy of the RCRA regulatory docket for this proposed rule, EPA–R06–RCRA–2009–0312, is available for viewing from 8 a.m. to 5 p.m., Monday through Friday, excluding Federal holidays. The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: For further technical information concerning this document or for appointments to view the docket or the Eastman facility petition, contact Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–C, 1445 Ross Avenue, Dallas, TX 75202, by calling (214) 665–7430 or by e-mail at *peace.michelle@epa.gov.*

Your requests for a hearing must reach EPA by October 12, 2010. The request must contain the information described in 40 CFR 260.20(d) (hereinafter all sectional references are to 40 CFR unless otherwise indicated).

SUPPLEMENTARY INFORMATION: Eastman submitted a petition under 40 CFR 260.20 and 260.22(a). Section 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273. Section 260.22 (a) specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator specific" basis from the hazardous waste lists.

The Agency bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would conditionally exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, we would conclude the petitioned waste from this facility is non-hazardous with respect to the original listing criteria and that the waste process used will substantially reduce the likelihood of migration of hazardous constituents from this waste. We would also conclude that the processes minimize short-term and long-term threats from the petitioned waste to human health and the environment.

Table of Contents

I. Overview Information

A. What action is EPA approving?

EPA is approving the delisting petition submitted by Eastman to have three waste streams generated from its rotary kiln incinerator (RKI) excluded, or delisted, from the definition of a hazardous waste. These waste streams are the rotary kiln incinerator (RKI) bottom ash, RKI fly ash, and RKI scrubber water blowdown. The RKI bottom ash and the RKI fly ash are derived from the management of several F-, K-, and U-waste codes. These waste codes are F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359. The Scrubber water blowdown produced by the RKI's air pollution control equipment is also derived from the management of several F-, K-, and U-waste codes as well as certain characteristic hazardous wastes. These waste codes are D001, D002, D003, D007, D008, D018, D022, F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359. The RKI is authorized to manage a list of additional F-, K-, U-, and P-codes to cover off-site sources not attributed to the above waste codes. If these waste codes are not specifically listed in the delisting exclusion, they are not covered by the exclusion and can not be managed as non-hazardous, unless and until, the exclusion is modified to include them.

B. Why is EPA approving this delisting?

Eastman's petition requests a delisting for three waste streams: The RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown listed as D001, D002, D003, D007, D008, D018, D022, F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359. Eastman does not believe that the petitioned wastes meet the criteria for which EPA listed them. Eastman also believes no additional constituents or factors could cause the wastes to be hazardous. EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)–(4). In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition. EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned wastes do not meet the listing criteria and thus should not be a listed waste. EPA's decision to delist the wastes identified above from the facility is based on the information submitted in support of this rule, including descriptions of the waste and analytical data from the Eastman, Longview, Texas facility.

C. How will Eastman manage the waste, if it is delisted?

Eastman will dispose of the fly ash and bottom ash in an onsite landfill. The scrubber water blowdown will be managed in the waste water treatment plant (WWTP). The sludge from the WWTP has been delisted. See Appendix IX to Part 261, Table 1. All management occurs on-site and will remain the same after the delisting is granted.

D. When would the delisting exclusion be finalized?

RCRA section 3001(f) specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion unless and until it addresses all timely public comments (including those at public hearings, if any) on this proposal.

RCRA section 3010(b)(1), at 42 USCA 6930(b)(1), allows rules to become effective in less than six months after EPA addresses public comments when the regulated facility does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How would this action affect the states?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude states which have received authorization from EPA to make their own delisting decisions.

EPA allows the states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the state. Because a dual system (that is, both Federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, EPA urges petitioners to contact the state regulatory authority to establish the status of their wastes under the state law. Delisting petitions approved by EPA Administrator under 40 CFR 260.22 are effective in the State of Texas only after the final rule has been published in the **Federal Register.**

II. Background

A. What is the history of the delisting program?

EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. EPA has amended the lists several times and codified them in §§ 261.31 and 261.32. EPA lists these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in § 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be hazardous.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What is a delisting petition, and what does it require of a petitioner?

A delisting petition is a request from a facility to EPA or an authorized State to exclude wastes from the list of hazardous wastes. The facility petitions EPA because it does not believe the wastes should be hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for which the waste was listed. The criteria for which EPA lists a waste are in Part 261 and further explained in the background documents for the listed waste.

In addition, under § 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics and present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. See Part 261 and the background documents for the listed waste.

Generators remain obligated under RCRA to confirm whether their waste remains non-hazardous based on the hazardous waste characteristics even if EPA has "delisted" the waste.

C. What factors must EPA consider in deciding whether to grant a delisting petition?

Besides considering the criteria in § 260.22(a) and section 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which EPA listed the waste, if a reasonable basis exists to determine that these additional factors could cause the waste to be hazardous.

EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See § 261.3(a)(2)(iii) and (iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 66 FR 27266 (May 16, 2001).

III. EPA's Evaluation of the Waste Information and Data

A. What waste did Eastman petition EPA to delist?

Eastman petitioned EPA on December 1, 2008, to exclude from the lists of hazardous wastes contained in §§ 261.24, 261.31, and 261.32, certain wastes from its rotary kiln incineration system. The three waste streams included in the petition were: the RKI fly ash, RKI bottom ash and RKI scrubber water blowdown.

The waste streams are generated from the Eastman facility located in Longview, Texas. The RKI fly ash and RKI bottom ash are listed under EPA Hazardous Waste No. F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359. The Scrubber water blowdown produced by the RKI's air pollution control equipment is also derived from the management of several F-, K-, and U-waste codes as well as certain characteristic hazardous wastes. These waste codes are D001, D002, D003, D007, D008, D018, D022, F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359. Specifically, in its petition, Eastman requested that EPA grant exclusions for 1,000 cubic yards per calendar year of RKI fly ash; 750 cubic yards per calendar year of RKI bottom ash; and 643,000 cubic yards (500,000 million gallons) of RKI scrubber water blowdown waste resulting from the operations of the rotary kiln incinerator at its facility.

B. Who is Eastman and what process do they use to generate the petitioned waste?

Eastman manufactures a variety of chemicals and plastics at its facility located in Longview, Texas. The Longview, Texas facility occupies roughly 6,000 acres of land and produces approximately 40 chemical and plastic product lines. While Eastman owns and operates a majority of individual production plants at the facility, there are some production plants that are not owned by Eastman but are located on the facility. Eastman provides utility support to these captured facilities, such use of the wastewater treatment plant and waste management in the RKI through service agreements. The production processes employed by the captured facilities produce products in conjunction with Eastman. The Eastman-Longview Texas facility also accepts waste for processing in the RKI from other off-site Eastman facilities. This facility does not accept wastes from sources outside the Eastman family. The unit is dedicated to wastes similar to those generated by Eastman only facilities.

The RKI is a thermal combustion unit owned and operated by Eastman that is used for the destruction of hazardous and non-hazardous wastes generated by Eastman Chemicals as well as its captured facilities. The RKI operates at 1700–2200 °F and is RCRA permitted to manage a large variety of wastes including wastes generated from other Eastman divisions. These wastes can have a variety of D-, F-, U-, K-, and P-codes. In practice, the waste codes managed in the RKI will be associated with production processes from Eastman Chemicals.

The RKI Bottom and Fly Ashes and Scrubber Water Blowdown are generated by the RKI as residuals from the waste combustion process. Bottom ash is generated when large particulate matter drops from the secondary combustion chamber (SCC) into an ash removal pit situated directly under the SCC. Bottom ashes are removed from the pit via a chain driven ash conveyor system and placed in large containers for subsequent management. They are tested, may have polymers added to them for stabilization and disposed of in an on-site hazardous waste landfill. Fly ash is lighter than bottom ash and is associated with finer particulate matter that leaves the SCC as part of the "exhaust" gas. From the SCC, exhaust gases pass through a rapid quench tank and condenser, which have water layers to capture smaller particulate matter. Exhaust gas then proceeds through a wet scrubber where more particulate matter is removed. The "blowdown" water streams through the quench/condenser and scrubber systems are routed to a blowdown tank (clarifier). In the tank, the combined blowdown stream (fly ash and water) is phase separated with the scrubber water blowdown then going to the wastewater system and fly ash slurry going to a rotary filter for dewatering. It is at this point in the system that scrubber water blowdown is defined. It is also at this point in the system that dewatered solids from the rotary filter are considered fly ash. The dewatered fly ash is removed from the filter and placed in large containers for subsequent management which can consist of testing, addition of polymers (as needed), and disposal in the on-site hazardous waste landfill.

Eastman intends to dispose of the delisted RKI bottom ash and RKI fly ash at a on-site Subtitle D Landfill, and the RKI scrubber water blowdown will be treated in the Wastewater Treatment Plant. Treatment of process wastes and wastes from captured facilities generate the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown that is classified as F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359 listed hazardous wastes pursuant to 40 CFR 261.31 and 261.32. The 40 CFR Part 261 Appendix VII hazardous constituents which are the basis for listing can be found in Table 1 and Table 2.

TABLE 1—EPA WASTE CODES FOR RKI ASHES AND THE BASIS FOR LISTING

Waste code	Basis for listing
F001	Tetrachloroethylene, methylene chloride trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, chlorinated fluorocarbons.
F002	Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane.
F003	N.A., xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexane, methanol.
F005	Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2-ethoxyethanol, benzene, 2-nitropropane.
F039	All constituents for which treatment standards are specified for multi-source leachate (wastewaters and nonwastewaters) under 40 CFR 268.43, Table CCW.
K009	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid.
K010	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid, chloroacetaldehyde.
U001	Acetaldehyde.
U002	Acetone.
U028	Bis (2-ethyl hexyl) phthalate.
U031	n-Butyl alcohol.
U069	Dibutyl phthalate.
U088	Di-ethyl phthalate.
U107	Di-n-octyl phthalate.
U112	Ethyl acetate.
U115	Ethylene oxide.
U117	Ethane, 1,1′-oxybis-(I).
U122	Formaldehyde.
U140	Isobutyl alcohol.
U147	Maleic anhydride.
U154	Methanol.
U159	Methyl ethyl ketone.
U161	Methyl isobutyl ketone.
U213	Tetrahydrofuran.
U220	Toluene.
U226	1,1,1–Trichloroethane (methyl chloroform).
U239	Xylene.
U359	Ethylene glycol monoethyl ether.

TABLE 2—EPA WASTE CODES FOR RKI ASHES AND THE BASIS FOR LISTING

Waste code	Basis for listing
F001	Tetrachloroethylene, methylene chloride trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, chlorinated fluorocarbons.
F002	Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane.
F003	N.A., xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexane, methanol.
F005	Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2-ethoxyethanol, benzene, 2-nitropropane.
F039	All constituents for which treatment standards are specified for multi-source leachate (wastewaters and nonwastewaters) under 40 CFR 268.43, Table CCW.
K009	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid.
K010	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid, chloroacetaldehyde.
U001	Acetaldehyde.
U002	Acetone.
U028	Bis (2-ethyl hexyl) phthalate.
U031	n-Butyl alcohol.
U069	Dibutyl phthalate.
U088	Di-ethyl phthalate.
U107	Di-n-octyl phthalate.
U112	Ethyl acetate.
U115	Ethylene oxide.
U117	Ethane, 1,1′-oxybis-(I).
U122	Formaldehyde.
U140	Isobutyl alcohol.
U147	Maleic anhydride.
U154	Methanol.
U159	Methyl ethyl ketone.
U161	Methyl isobutyl ketone.

TABLE 2—EPA WASTE CODES FOR RKI ASHES AND THE BASIS FOR LISTING—Continued

Waste code	Basis for listing
U213	Tetrahydrofuran.
U220	Toluene.
U226	1,1,1–Trichloroethane (methyl chloroform).
U239	Xylene.
U359	Ethylene glycol monoethyl ether.
D001	Ignitability.
D002	Corrosivity.
D003	Reactivity.
D007	Chromium.
D008	Lead.
D018	Benzene.
D022	Chloroform.

C. What information did Eastman submit to support this petition?

To support its petition, Eastman submitted:

1. Analytical results of the toxicity characteristic leaching procedure and total constituent analysis for volatile and semivolatile organics, pesticides, herbicides, dioxins/furans, PCBs and metals for eight samples for the RKI fly ash and RKI bottom ash, and RKI scrubber water blowdown;
2. Analytical results of the total constituent analysis for volatile and semivolatile organics, pesticides, herbicides, dioxins/furans, PCBs and metals for eight samples for the RKI scrubber water blowdown;
3. Analytical results from multiple pH leaching of metals and;
4. Description of the operations and waste received of the RKI.

D. What were the results of Eastman's analysis?

EPA believes that the descriptions of Eastman's waste, and the analytical data submitted in support of the petition show that the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown are non-hazardous. Analytical data from Eastman's RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown samples were used in the Delisting Risk Assessment Software (DRAS). The data summaries for detected constituents are presented in Table 3, 4, and 5. EPA has reviewed the sampling procedures used by Eastman and has determined that they satisfy EPA's criteria for collecting representative samples of the variations in constituent concentrations in the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown. The data submitted in support of the petition show that constituents in Eastman's wastes are presently below health-based risk levels used in the delisting decision-making. EPA believes that Eastman has successfully demonstrated that the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown are non-hazardous.

TABLE 3—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATIONS OF THE RKI BOTTOM ASH[1]

Constituent	Maximum total (mg/kg)	Maximum TCLP (mg/l)	Maximum allowable TCLP delisting level (mg/L)
Antimony	16	0.062	0.801
Acetone	0.194	0.772	33.8
Arsenic	8.8	0.029	0.126
Acetaldehyde	1.37	<0.0100	5.35
Acenaphthylene	3.5	0.014	31.9
Anthracene	1.6	<0.0100	77.9
Acenaphthene	0.721	0.014	31.9
Barium	370	0.7	100
Benzene	<0.170	0.0048	0.231
Bis(2-ethylhexyl)phthalate	0.23	0.017	103.0
Benzo(a) anthracene	0.763	<0.0100	0.211
Benzo(a) pyrene	0.519	<0.0100	79.1
Benzo(b) flouranthene	0.343	<0.0100	673
Bromomethane	0.057	<0.0100	0.0526
n-Butyl alcohol	4.5	<0.0100	174
Cadmium	1.5	0.002	0.274
Chromium	14	0.02	5.0
Cobalt	31	0.023	0.643
Copper	29	0.048	73.8
Chloroform	0.0024	0.0047	0.241
Chrysene	0.545	<0.0100	211
Chloromethane	0.034	<0.0100	18.2
Cyanide	0.195	0.125	9.25
4,4–DDT	0.0032	<0.0100	0.0103
Di-n-butyl phthalate	<0.010	0.005	73.9
Dieldrin	0.0013	<0.0100	2.78
Ethylbenzene	0.0086	0.00855	32.6
Fluorene	2.24	0.031	14.7
Formaldehyde	4.6	0.23	347
Fluoranthrene	1.22	<0.0100	7.39

TABLE 3—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATIONS OF THE RKI BOTTOM ASH[1]—Continued

Constituent	Maximum total (mg/kg)	Maximum TCLP (mg/l)	Maximum allowable TCLP delisting level (mg/L)
Isobutanol	1.9	1.88	521
Lead	7.1	0.016	1.95
Mercury	<0.017	<0.0002	0.2
Methyl Isobutyl ketone	0.0035	0.0048	139
2–Methylnaphathalene	0.501	0.012	2.18
Methylene Chloride	0.072	0.131	0.237
Naphthalene	<0.022	<0.0100	0.0983
Nickel	44,000	52	54.1
Phenanthrene	6.48	0.039	14.7
Pyrene	2.67	<0.0100	13.4
Selenium	15	0.074	1.0
Silver	0.027	<0.0020	5.0
Tetrachlorodibenzo-p-dioxin (TCDD) 2,3,7,8-	0.31E–06	<5.92E–08	7.46 E–06 mg/kg total
Thallium	3.7	0.017	0.110
Tin	3.9	<0.0100	22.5
Toluene	0.015	0.0066	45.4
Vanadium	7.1	0.11	10.4
Xylenes	0.049	0.0486	28.7
Zinc	550	8.5	600

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.
< # Denotes that the constituent was below the detection limit.

TABLE 4—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATIONS OF THE RKI FLY ASH[1]

Constituent	Maximum total (mg/kg)	Maximum TCLP (mg/l)	Maximum allowable TCLP delisting level (mg/L)
Antimony	25	0.18	0.433
Acetone	0.177	0.959	2070
Arsenic	18	0.045	0.418
Acetaldehyde	255	<0.001	0.6264
Barium	110	1.4	100
Bis(2-ethylhexyl)phthalate	0.157	0.006	0.0522
Cadmium	2.9	0.011	0.362
Chromium	5.9	0.015	5.0
Cobalt	86	0.1	0.852
Copper	100	0.52	97.1
Chloroform	0.002	0.0044	0.319
Chloromethane	0.0285	0.0018	24.1
Cyanide	0.17	<0.001	0.0154
Delta BHC	0.0031	<0.001	3
1,2–Dichlorobenzene	<0.5	0.0027	37
1,3–Dichlorobenzene	<0.5	0.0023	37
Formaldehyde	5.44	0.272	461
Lead	12	0.021	2.45
Methanol	12.2	<0.001	0.6743
Methyl isobutanol ketone	0.004	0.0048	184
Methylene Chloride	0.047	0.137	0.315
Nickel	110,000	47	53.8
Nitrobenzene	<0.5	0.011	1.15
Selenium	25	0.082	1.0
Silver	2.4	<0.001	5.0
Thallium	6.7	0.019	0.146
Tin	7.8	<0.001	22.5
Toluene	0.002	0.037	60.1
Vanadium	6.2	<0.001	14.36
Zinc	4200	<0.001	11.3
Tetrachlorodibenzo-p-dioxin (TCDD) 2,3,7,8-	....	2.8 E–06 mg/kg	8.39 E–05 mg/kg total

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.
< # Denotes that the constituent was below the detection limit.

TABLE 5—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATIONS OF THE RKI SCRUBBER WATER BLOWDOWN [1]

Constituent	Maximum TCLP (mg/l)	Maximum allowable TCLP delisting level (mg/l)
Antimony	0.041	0.0568
Arsenic	0.013	0.112
Barium	0.61	11.6
Bis(2-ethylhexyl)phthalate	0.009	0.0522
Chromium	0.019	10.3
Cobalt	0.012	0.318
Copper	0.052	22.1
Chloroform	0.001	0.0163
Chloromethane	0.0021	1.48
Cyanide	0.0048	0.752
Di-n-butylphthalate	0.001	25.6
Lead	0.019	2.57
Methanol	0.42	70.6
Nickel	0.50	5.74
Silver	0.002	1.71
Thallium	0.011	0.0179
Tin	0.022	22.5
Vanadium	0.006	4.88
Zinc	16	77.7

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

< # Denotes that the constituent was below the detection limit.

E. How did EPA evaluate the risk of delisting this waste?

The worst case scenario for management of the RKI bottom ash and RKI fly ash was modeled for disposal in a landfill. The worst case scenario for management of the RKI scrubber water blowdown was modeled for disposal in a surface impoundent. EPA used such information gathered to identify plausible exposure routes (i.e., ground water, surface water, soil, air) for hazardous constituents present in the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown. EPA determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for Eastman's RKI bottom ash and RKI fly ash. EPA determined that disposal in a surface impoundment is the most reasonable, worst-case disposal scenario for Eastman's RKI scrubber water blowdown. EPA applied the DRAS described in 65 FR 58015 (September 27, 2000), 65 FR 75637 (December 4, 2000) and 73 FR 28768 (May 19, 2008), to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned wastes after disposal and determined the potential impact of the disposal of Eastman's petitioned wastes on human health and the environment. In assessing potential risks to ground water, EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the ground water at a hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of 10^{5} and non-cancer hazard index of 0.1), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and Agency health-based numbers. Using the maximum compliance-point concentrations and EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in ground water.

EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible ground water contamination resulting from disposal of the petitioned waste in a landfill for the ashes, and a surface impoundment for the liquid scrubber water blowdown. A reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenarios resulted in conservative values for the compliance-point concentrations and ensured that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health and/or the environment. The DRAS also uses the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (e.g., volatilization or wind-blown particulate from the landfill). As in the above ground water analyses, the DRAS uses the risk level, the health-based data and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or "delisting levels").

In most cases, because a delisted waste is no longer subject to hazardous waste control, EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, the ground water monitoring data was submitted in the previous petition and these wastes do not appear to be impacting the ground water of the landfill.

EPA believes that the descriptions of Eastman's RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown and analytical characterizations of these wastes illustrate the presence of toxic constituents at lower concentrations in these waste streams. Therefore, it is reasonable to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are minimized.

The DRAS results, which calculated the maximum allowable concentration of chemical constituents in the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown are presented in Tables 3, 4, and 5. Based on the comparison of the DRAS results and maximum TCLP concentrations found in Tables 3, 4, and 5, the petitioned wastes should be delisted because no constituents of concern are likely to be present or formed as reaction products or by products in Eastman's wastes.

F. What did EPA conclude about Eastman's analysis?

EPA concluded, after reviewing Eastman's processes that no other hazardous constituents of concern, other than those for which Eastman tested, are likely to be present or formed as reaction products or by-products in Eastman's wastes. In addition, on the basis of explanations and analytical data provided by Eastman, pursuant to § 260.22, EPA concludes that the petitioned wastes: RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown do not exhibit any of the characteristics of ignitability, corrosivity, reactivity, or toxicity. See §§ 261.21, 261.22, 261.23, and 261.24 respectively.

G. What other factors did EPA consider in its evaluation?

During the evaluation of this petition, in addition to the potential impacts to the ground water, EPA also considered the potential impact of the petitioned waste via non-ground water exposure routes (i.e., air emissions and surface runoff) for the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown. With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from the petitioned waste is unlikely. No appreciable air releases are likely from the RKI bottom ash and, RKI fly ash under any likely disposal conditions. EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from the wastewater in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from the RKI bottom ash and RKI fly ash. The RKI scrubber water blowdown was also evaluated for releases to the air from an impoundment and no substantial present or potential hazard was identified.

H. What is EPA's evaluation of this delisting petition?

The descriptions by Eastman of the hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis for EPA to grant the petition. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable concentrations (*See* Tables 3, 4, and 5). EPA believes that the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown generated by Eastman contains hazardous constituents at levels which will present minimal short-term and long-term threats from the petitioned wastes to human health and the environment.

Thus, EPA believes that it should grant to Eastman an exclusion from the list of hazardous wastes for the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown. EPA believes that the data submitted in support of the petition show the Eastman's RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown to be non-hazardous.

EPA has reviewed the sampling procedures used by Eastman and has determined they satisfy EPA's criteria for collecting representative samples of variable constituent concentrations in the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown. The data submitted in support of the petition show that constituents in Eastman's wastes are presently below the compliance-point concentrations used in the delisting decision-making process and would not pose a substantial hazard to the environment and the public. EPA believes that Eastman has successfully demonstrated that the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown are non-hazardous.

EPA, therefore, proposes to grant an exclusion to Eastman for the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown described in its December 2008 petition. EPA's decision to exclude these wastes is based on analysis performed on samples taken of the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown.

If EPA finalizes the proposed rule, EPA will no longer regulate 1,000 cubic yards/year of RKI bottom ash; 750 cubic yards/year of RKI fly ash, and 643,000 cubic yards/year (500,000 million gallons) of RKI scrubber water blowdown from Eastman's Longview facility under parts 262 through 268 and the permitting standards of part 270.

IV. Next Steps

A. With what conditions must the petitioner comply?

The petitioner, Eastman, must comply with the requirements in 40 CFR Part 261, Appendix IX, Tables 1, 2, and 3 as amended by this notice. The text below gives the rationale and details of those requirements.

(1) Delisting Levels

This paragraph provides the levels of constituent concentrations for which Eastman RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown, below which these wastes would be considered non-hazardous.

EPA selected the set of inorganic and organic constituents specified in paragraph (1) and listed in 40 CFR part 261, appendix IX, tables 1, 2, or 3 based on information in the petition. EPA compiled the inorganic and organic constituents list from descriptions of the manufacturing process used by Eastman, previous test data provided for the waste, and the respective health-based levels used in delisting decision-making. These delisting levels correspond to the allowable levels measured in the leachable concentrations of the RKI bottom ash and RKI fly ash, and total concentrations of the RKI scrubber water blowdown.

(2) Waste Holding and Handling

Waste classification as non-hazardous cannot begin until compliance with the limits set in paragraph (1) has occurred for four consecutive quarterly sampling events. For example, if Eastman is issued a final exclusion in August, the first of four quarterly samples per waste stream can be collected in September. If EPA deems that the four representative composite samples of each waste stream meet all the indicator constituent delisting limits, classification of the waste as non-hazardous can begin in September of the next year. If constituent levels in any annual sample (and retest, if applicable) taken by Eastman exceed any of the delisting levels set in paragraph (1), Eastman must: (i) notify EPA in accordance with paragraph (6), and; (ii) manage and dispose of the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown as hazardous waste generated under Subtitle C of RCRA.

(3) Verification Testing Requirements

Eastman must complete a verification testing program on the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown to assure that the wastes do not exceed the maximum levels specified in paragraph (1). If EPA determines that the data collected under this paragraph does not support the data provided in the petition, the exclusion will not cover the tested waste. This verification program operates on two levels.

The initial part of the verification testing program consists of testing four composite samples from four consecutive quarters of RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown for specified indicator parameters as described in paragraph (1). Levels of constituents measured in the samples of the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown that do not exceed the levels set forth in paragraph (1) can be considered non-hazardous after all four sets of sampling data meet the levels listed in paragraph (1).

The second part of the verification testing program is the annual testing of a representative composite sample of the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown for all constituents specified in paragraph (1). If any delisting levels are not met in an annual test sample, then a second composite sample shall be collected within 10 days of becoming aware of the failure, and it must be analyzed expeditiously for the TCLP constituent(s) that exceeded Delisting Levels.

If the annual testing of the wastes, and the retest, do not meet the delisting levels in paragraph (1), Eastman must notify EPA according to the requirements in paragraph (6). EPA will then take the appropriate actions necessary to protect human health and the environment as described in paragraph (6). Eastman must provide sampling results that support the rationale that the delisting exclusion should not be withdrawn.

The final exclusion is effective upon publication in the **Federal Register** but the change in waste classification as "non-hazardous" cannot begin until the four quarterly initial verification samples comply with the levels specified in paragraph (1). The waste classification as "non-hazardous" is also not authorized, if Eastman fails to perform the testing as specified herein. Should Eastman conduct the yearly testing as specified herein, then disposal of RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown as delisted waste may not occur in the following year(s) until Eastman obtains the written approval of EPA.

(4) Changes in Operating Conditions

Paragraph (4) would allow Eastman the flexibility of modifying its processes (for example, changes in equipment or change in operating conditions) to improve its treatment processes. However, Eastman must prove the effectiveness of the modified process and request approval from EPA. Eastman must manage wastes generated during the new process demonstration as hazardous waste through verification sampling within 30 days of start-up.

(5) Data Submittals

To provide appropriate documentation that the Eastman facility is correctly managing the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown, Eastman must compile, summarize, and keep delisting records on-site for a minimum of five years. Eastman must keep all analytical data obtained pursuant to paragraph (3), including quality control information, for five years. Paragraph (5) requires that Eastman furnish these data upon request for inspection by any employee or representative of EPA or the State of Texas.

If the exclusion is made final, then it will apply only to 1,000 cubic yards/year of RKI bottom ash; 750 cubic yards/year of RKI fly ash, and 643,000 cubic yards/year (500,000 million gallons) of RKI scrubber water blowdown generated at the Eastman facility after successful initial verification testing.

EPA would require Eastman to submit additional verification data under any of the following circumstances:

(a) If Eastman significantly alters the waste treatment system except as described in paragraph (4).

(b) If Eastman uses any new manufacturing or production process(es), or significantly changes the current process(es) described in its petition; or

(c) If Eastman makes any changes that could significantly affect the composition or type of waste generated.

Eastman must submit a modification to the petition complete with full sampling and analysis for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream. EPA will publish an amendment to the exclusion, if the changes are acceptable.

Eastman must manage waste volumes greater than 1,000 cubic yards/year of RKI bottom ash; 750 cubic yards/year of RKI fly ash and 643,000 cubic yards/year (500,000 million gallons) of RKI scrubber water blowdown as hazardous waste until EPA grants a revised exclusion. When this exclusion becomes final, the management by Eastman of the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown covered in this petition would be relieved from Subtitle C jurisdiction. Eastman may not classify the waste as non-hazardous until the revised exclusion is finalized.

(6) Reopener

The purpose of paragraph (6) is to require Eastman to disclose new or different information related to a condition at the facility or disposal of the waste, if it is pertinent to the delisting. Eastman must also use this procedure if the waste sample (and retest, if applicable) in the annual testing fails to meet the levels found in paragraph (1). This provision will allow EPA to reevaluate the exclusion, if a source provides new or additional information to EPA. EPA will evaluate the information on which it based the decision to see if it is still correct or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition, if presented.

This provision expressly requires Eastman to report differing site conditions or assumptions used in the petition in addition to failure to meet the annual testing conditions within 10 days of discovery. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

It is EPA's position that it has the authority under RCRA and the Administrative Procedures Act (APA), 5 U.S.C. 551 (1978) *et seq.,* to reopen a delisting decision. EPA may reopen a delisting decision when it receives new information that calls into question the assumptions underlying the delisting.

EPA believes a clear statement of its authority in delisting is merited in light of EPA's experience. *See* the **Federal Register** notice regarding Reynolds Metals Company at 62 FR 37694 (July 14, 1997) and 62 FR 63458 (December 1, 1997) where the delisted waste leached at greater concentrations into the environment than the concentrations predicted when conducting the TCLP, leading EPA to repeal the delisting. If an immediate threat to human health and the environment presents itself, EPA will continue to address these situations on a case-by-case basis. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. *See* APA section 553(b)(3)(B).

B. What happens if Eastman violates the terms and conditions?

If Eastman violates the terms and conditions established in the exclusion, EPA will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, EPA will evaluate the need for enforcement activities on a case-by-case basis. EPA expects Eastman to conduct the appropriate waste analysis and comply with the criteria explained above in paragraph (1) of the exclusion.

V. Final Action

EPA is approving the delisting petition for three waste streams generated at Eastman Chemical's Longview, Texas facility: (1) The RKI bottom ash; the RKI fly ash; and the RKI scrubber water blowdown.

EPA is publishing this rule without prior proposal because we view this as a non-controversial exclusion and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve the petition if relevant adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We would address all public comments in a subsequent final rule based on the proposed rule. Please note that if we receive adverse comment on a paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism," (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule. Similarly, because this rule will affect only a particular facility, this proposed rule does not have tribal implications, as specified in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to infants and children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, "Civil Justice Reform," (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f)

Dated: September 8, 2010.

Bill Luthans,

Acting Director, Multimedia Planning and Permitting Division.

■ For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

■ 2. In Tables 1, 2 and 3 of Appendix IX to part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22.

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Eastman Chemical Company—Texas Operations.	Longview, TX.	RKI bottom ash (EPA Hazardous Waste Numbers F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359.) generated at a maximum rate of 1,000 cubic yards per calendar year after September 24, 2010 and disposed in Subtitle D Landfill. RKI fly ash EPA Hazardous Waste Number F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359 generated at a maximum rate of 750 cubic yards per calendar year after September 24, 2010 and disposed in Subtitle D Landfill. RKI scrubber water blowdown (EPA Hazardous Waste Numbers D001, D002, D003, D007, D008, D018, D022, F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359 generated at a maximum rate of 643,000 cubic yards (500,000 million gallons) per calendar year after September 24, 2010 and treated and discharged from a Wastewater Treatment Plant. For the exclusion to be valid, Eastman must implement a verification testing program for each of the waste streams that meets the following Paragraphs: (1) Delisting Levels: All concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph. (A) RKI Bottom Ash. Leachable Concentrations (mg/l): Antimony—0.801; Acetone—33.8; Arsenic—0.126; Acetaldehyde—5.35; Acenaphthylene—31.9; Anthracene—77.9; Acenaphthene—31.9; Barium—100; Benzene—0.231; Bis(2-ethylhexyl)phthalate—103; Benzo (a) anthracene—0.211; Benzo (a) pyrene—79.1; Benzo (b) flouranthene—673; Bromomethane—0.0526; n-Butyl Alcohol—174; Cadmium—0.274; Chromium—5.0; Cobalt—0.643; Copper—73.8; Chloroform—0.241; Chrysene—211; chloromethane—18.2; Cyanide—9.25; 4,4-DDT—0.0103; Di-n-butyl phthalate—73.9; Dieldrin—2.78; Ethylbenzene—32.6; Fluorene—14.7; Formaldehyde-347; Fluoranthrene—7.39; Isobutanol—521; Lead—1.95; Mercury—0.2; Methy Isobutyl ketone—139; 2–Methylnaphathalene—2.18; Methylene Chloride—0.237; Naphthalene—0.0983; Nickel—54.1; Phenanthrene—14.7; Pyrene—13.4; Selenium—1.0; Silver—5.0; Thallium—0.110; Tin—22.5; Toluene—45.4; Vanadium—10.4; Xylene—28.7; Zinc—600. *Total Concentrations (mg/kg)* Tetrachlorodibenzo-p-dioxin (TCDD) 2,3,7,8–7.46 E–06 mg/kg. (B) RKI Fly Ash. Leachable Concentrations (mg/l): Antimony—0.111; Acetone—533; Arsenic—0.178; Barium—36.9; Bis(2-ethylhexyl)phthalate—6.15; Chromium—2.32; Copper—26.5; Ethylbenzene—11.1; Methylene Chloride—0.0809; Naphthalene—0.0355; Nickel—13.8; Phenanthrene—2.72; Toluene—15.5; Trichloroethane—11900; Trichloroethylene—0.0794; Vanadium—1.00; Zinc—202. *Total Concentrations (mg/kg)* Tetrachlorodibenzo-p-dioxin (TCDD) 2,3,7,8–4.30 E–05 mg/kg. (C) RKI Scrubber Water Blowdown. TCLP Concentrations (mg/l): Antimony—0.0568; Arsenic—0.112; Barium—11.6; Bis(2-ethylhexyl)phthalate—0.0522; Chromium—5.0; Cobalt—0.318, Copper—22.1; Chloroform—0.0163, Chloromethane—1.48; Cyanide—0.752; Di-n-butylphthalate—25.6; Lead—2.57; Methanol—70.6; Nickel—5.74; Silver—1.71; Thallium—0.0179; Tin—22.5; Vanadium—4.88; Zinc—77.7; (2) Waste Holding and Handling: (A) Waste classification as non-hazardous cannot begin until compliance with the limits set in paragraph (1) for RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown has occurred for four consecutive quarterly sampling events. (B) If constituent levels in any annual sample and retest sample taken by Eastman exceed any of the delisting levels set in paragraph (1) for the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown, Eastman must do the following: (i) notify EPA in accordance with paragraph (6) and (ii) manage and dispose the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown as hazardous waste generated under Subtitle C of RCRA. (3) Testing Requirements: Upon this exclusion becoming final, Eastman must perform analytical testing by sampling and analyzing the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown as follows: (A) Initial Verification Testing: (i) Collect four representative composite samples of the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown at quarterly intervals after EPA grants the final exclusion. The first composite sample of each waste stream may be taken at any time after EPA grants the final approval. Sampling must be performed in accordance with the sampling plan approved by EPA in support of the exclusion. (ii) Analyze the samples for all constituents listed in paragraph (1). Any composite sample taken that exceeds the delisting levels listed in paragraph (1) indicates that the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown must continue to be disposed as hazardous waste in accordance with the applicable hazardous waste requirements until such time that four consecutive quarterly samples indicate compliance with delisting levels listed in paragraph (1). (iii) Within sixty (60) days after taking its last quarterly sample, Eastman will report its analytical test data to EPA. If levels of constituents measured in the samples of the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown do not exceed the levels set forth in paragraph (1) of this exclusion for four consecutive quarters, Eastman can manage and dispose the non-hazardous RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown according to all applicable solid waste regulations. (B) Annual Testing:

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(i) If Eastman completes the quarterly testing specified in paragraph (3) above and no sample contains a constituent at a level which exceeds the limits set forth in paragraph (1), Eastman must begin annual testing as follows: Eastman must test a representative composite sample of the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown for all constituents listed in paragraph (1) at least once per calendar year. If any measured constituent concentration exceeds the delisting levels set forth in paragraph (1), Eastman must collect an additional representative composite sample within 10 days of being made aware of the exceedence and test it expeditiously for the constituent(s) which exceeded delisting levels in the original annual sample.
		(ii) The samples for the annual testing shall be a representative composite sample according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B,1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that samples of the Eastman RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown are representative for all constituents listed in paragraph (1).
		(iii) The samples for the annual testing taken for the second and subsequent annual testing events shall be taken within the same calendar month as the first annual sample taken.
		(iv) The annual testing report should include the total amount of delisted waste in cubic yards disposed during the calendar year.
		(4) Changes in Operating Conditions: If Eastman significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could affect the composition or type of waste generated (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing and it may no longer handle the wastes generated from the new process as non-hazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from EPA.
		Eastman must submit a modification to the petition complete with full sampling and analysis for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream.
		(5) Data Submittals:
		Eastman must submit the information described below. If Eastman fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (6). Eastman must:
		(A) Submit the data obtained through paragraph 3 to the Chief, Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Ave., Dallas, Texas 75202, within the time specified. All supporting data can be submitted on CD–ROM or comparable electronic media.
		(B) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years.
		(C) Furnish these records and data when either EPA or the State of Texas requests them for inspection.
		(D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted:
		"Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.
		As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.
		If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."
		(6) Reopener
		(A) If, anytime after disposal of the delisted waste Eastman possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at a level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data.
		(B) If either the annual testing (and retest, if applicable) of the waste does not meet the delisting requirements in paragraph 1, Eastman must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data.
		(C) If Eastman fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(D) If the Division Director determines that the reported information requires action by EPA, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from receipt of the Division Director's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Division Director will issue a final written determination describing EPA actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (7) *Notification Requirements:* Eastman must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) For onsite disposal a notice should be submitted to the State to notify the State that disposal of the delisted materials have begun. (C) Update one-time written notification, if it ships the delisted waste into a different disposal facility. (D) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.

TABLE 2—WASTE EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Eastman Chemical Company—Texas Operations.	Longview, TX.	RKI Bottom Ash. (EPA Hazardous Waste Number F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359) generated at a maximum rate of 1,000 cubic yards per calendar year after September 24, 2010 and disposed in Subtitle D Landfill. RKI Fly Ash. EPA Hazardous Waste Number F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359 generated at a maximum rate of 2,000 cubic yards per calendar year after September 24, 2010 and disposed in Subtitle D Landfill. RKI Scrubber Water Blowdown (EPA Hazardous Numbers D001, D002, D003, D007, D008, D018, D022, F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359 generated at a maximum rate of 643,000 cubic yards (500,000 million gallons) per calendar year after September 24, 2010 and treated and discharged from a Wastewater Treatment Plant. Eastman must implement the testing program in Table 1. Wastes Excluded from Non-Specific Sources for the petition to be valid.

TABLE 3—WASTE EXCLUDED FROM COMMERCIAL CHEMICAL PRODUCTS, OFF-SPECIFICATION SPECIES, CONTAINER RESIDUES, AND SOIL RESIDUES THEREOF

Facility	Address	Waste description
*	*	* * * * *
Eastman Chemical Company—Texas Operations.	Longview, TX.	RKI bottom ash (EPA Hazardous Waste Number F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359) generated at a maximum rate of 1,000 cubic yards per calendar year after September 24, 2010 and disposed in Subtitle D Landfill. RKI fly ash EPA Hazardous Waste Number F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359 generated at a maximum rate of 2,000 cubic yards per calendar year after September 24, 2010 and disposed in Subtitle D Landfill. RKI scrubber water blowdown (EPA Hazardous Numbers D001, D002, D003, D007, D008, D018, D022, F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359 generated at a maximum rate of 643,000 cubic yards (500,000 million gallons) per calendar year after September 24, 2010 and treated and discharged from a Wastewater Treatment Plant. Eastman must implement the testing program in Table 1. Wastes Excluded from Non-Specific Wastes for the petition to be valid.
*	*	* * * * *

[FR Doc. 2010–23965 Filed 9–23–10; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R07–RCRA–2008–0830; FRL–9205–3]

Nebraska: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), allows the Environmental Protection Agency (EPA) to authorize States to operate their hazardous waste management programs in lieu of the Federal program. Nebraska has applied to EPA for final authorization of the changes to its hazardous waste program under RCRA. EPA has determined that these changes satisfy all requirements needed to qualify for final authorization and is authorizing the State's changes through this immediate final action.

DATES: This Final authorization will become effective on September 24, 2010.

FOR FURTHER INFORMATION CONTACT: Lisa Haugen, EPA Region 7, AWMD/RESP, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551–7877, or by e-mail at *haugen.lisa@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why are revisions to state programs necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, a State must change its program accordingly and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, the State must change its program because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

Nebraska initially received final authorization on January 24, 1985, effective February 7, 1985 (50 FR 3345), to implement the RCRA hazardous waste management program. EPA granted authorization for changes to Nebraska's program on October 4, 1985, effective December 3, 1988 (53 FR 38950); June 25, 1996, effective August 26, 1996 (61 FR 32699); April 10, 2003, effective June 9, 2003 (68 FR 17553); and October 4, 2004, effective December 3, 2004.

On April 29, 2008, Nebraska submitted a final complete program revision application, seeking authorization of its changes in accordance with 40 CFR 271.21. On December 30, 2008, EPA published both an Immediate Final Rule (73 FR 79661) granting Nebraska final authorization for these revisions to its Federally-authorized hazardous waste program, along with a companion Proposed Rule announcing EPA's proposal to grant such a final authorization (73 FR 79761). EPA announced in both documents that the Immediate Final Rule and the Proposed Rule were subject to a thirty-day comment period. The public comment period ended on January 29, 2009. EPA received written comments from one commenter during the public comment period. Today's action responds to the comments EPA received and publishes EPA's final determination granting Nebraska final authorization of its program revisions. Further background on EPA's Immediate Final Rule and its tentative determination to grant authorization to Nebraska for its program revisions appears in the aforementioned **Federal Register** notices. The issues raised by the commenter are summarized and responded to as follows.

B. What were the comments and responses to EPA's proposal?

The comments did not address specific concerns with EPA's approval of the additional RCRA regulatory provisions in Nebraska's authorized hazardous waste program; rather the comments address a previous rule promulgated by EPA. The commenter's arguments relate specifically to EPA's promulgation of the Zinc Fertilizer Rule on July 24, 2002 (67 FR 48393). Specifically, the commenter argued that the Phase IV Land Disposal Restriction (LDR)—which is more stringent than the Zinc Fertilizer Rule—resulted from an "affirmative finding of safety" when zinc-containing hazardous wastes were disposed in Subtitle C landfills, so it is counterintuitive to claim that the same zinc-containing hazardous wastes can now "safely" be used as fertilizer. For the reasons set forth below, we do not agree with the commenter.

EPA promulgated all of the rules included in Nebraska's revision pursuant to the authority granted to EPA by Congress under RCRA. Those rules, including the Zinc Fertilizer Rule, were finalized after full consideration of any and all comments submitted in a timely manner. By adopting the rule promulgated by EPA, Nebraska revised its hazardous waste program to be equivalent to and consistent with the Federal program. Pursuant to 42 U.S.C. 6926(b), EPA has the authority to authorize State programs that are equivalent to and consistent with the Federal program. The comments submitted speak directly to the Federal rule and not to EPA's authorization of Nebraska's program revisions. Therefore, we have determined that there is no basis to deny authorizing approval based on these comments.

In addition, the commenter argues that exempting zinc-containing hazardous wastes from regulation as solid waste is not supported by Nebraska Revised Statute 75–362. This comment is not relevant to this action. The criteria for authorization of a State hazardous waste program are set forth at section 3006 of RCRA, 42 U.S.C. 6926(b). In reviewing an application under this section, EPA considers whether the State program (1) is equivalent to the Federal program under subchapter III, which governs hazardous waste; (2) is consistent with Federal or "State programs applicable to other States"; and (3) provides adequate enforcement of compliance with the requirements of subchapter III of RCRA. As part of this review, EPA considers whether the State is imposing requirements less stringent than those authorized under subchapter III respecting the same matter as governed by such regulation. The commenter's argument with regard to Nebraska Revised Statute 75–362 falls outside the scope of our review of Nebraska's application for the hazardous waste rules authorized herein. Therefore, the comment regarding Nebraska Revised Statute 75–362 is not relevant to this action.

C. What decisions have we made in this rule?

Based on EPA's response to public comments, the Agency has determined that approval of Nebraska's RCRA program revisions should proceed. EPA has made a final determination that Nebraska's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Nebraska final authorization to operate its hazardous waste program with the changes described in its application for program revisions. Nebraska is responsible for carrying out the aspects of the RCRA program described in its approved program applications, subject to the limitations of the Hazardous and Solid Waste Amendments (HSWA) of 1984. New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement any such HSWA requirements and prohibitions in Nebraska, including issuing HSWA permits, until the State is granted authorization to do so. For further background on the scope and effect of today's action to approve Nebraska's RCRA program revisions, please refer to the preambles of EPA's December 30, 2008, Proposed and Immediate Final Rules at 73 FR 79761 and 73 FR 79661 respectively.

D. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes state requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by state law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175, "Consultation and Coordination With Indian Tribal Governments" (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999), because it merely authorizes state requirements as part of the state RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045, "Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks that may affect children. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, "Civil Justice Reform" (61 FR 47729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630, "Government Actions and Interference with Constitutionally Protected Property Rights (53 FR 8859, March 15, 1988) by examining the takings implications the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective September 24, 2010.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 13, 2010.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2010–23990 Filed 9–23–10; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 300–80

[FTR Amendment 2010–03; FTR Case 2010–304; Docket 2010–0016; Sequence 1]

RIN 3090–ZA01

Federal Travel Regulation (FTR); Relocation Expenses Test Programs

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: This final rule updates the Federal Travel Regulation (FTR) to reflect statutory changes that extended the authority for relocation expenses test programs for Federal employees, made by the passage of Public Law 111–112 on November 30, 2009.

DATES: *Effective Date:* This final rule is effective September 24, 2010.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat (MVCB), Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Henry Maury, Office of Governmentwide Policy (M), Office of Travel, Transportation and Asset Management (MT), General Services Administration at (202) 208–7928 or e-mail at *henry.maury@gsa.gov.* Please cite FTR Amendment 2010–03; FTR case 2010–304.

SUPPLEMENTARY INFORMATION:

A. Background

On October 19, 1998, the President signed into law the Travel and Transportation Reform Act of 1998 (Pub. L. 105–264). Subsection 5(b) of Public Law 105–264, codified at 5 U.S.C. 5739, permits the Administrator of General Services to authorize Federal agencies to test new and innovative methods of reimbursing relocation expenses without seeking authorizing legislation or a waiver of regulations. This statutory provision is implemented in part 300–80 the Federal Travel Regulation (FTR) (41 CFR part 300–80), "Relocation Expenses Test Programs." Public Law 109–325 extended the test program authority through October 19, 2009. Public Law 111–112, enacted on November 30, 2009, extended the test program authority indefinitely.

B. Changes to the Current FTR

This final rule:

- Revises section 300–80.4 to update the maximum number of test programs that may be simultaneously running from 10 to 12;
- Revises section 300–80.6 to clarify test programs are limited to making payments in lieu of the relocation reimbursements contained in 5 U.S.C. chapter 57, subchapter II;
- Revises section 300–80.7 to update the duration of test programs and possible extensions from 24 months to four years;
- Redesignates current section 300–80.8 as section 300–80.9 and removes current section 300–80.9 because it is no longer valid;
- Adds new section 300–80.8 to add instructions for agencies wishing to apply for a test program extension; and
- Revises newly designated section 300–80.9 to clarify the reporting requirements for agencies conducting test programs.

C. Executive Order 12866

This regulation is excepted from the definition of "regulation" or "rule" under Section 3(d)(3) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993 and, therefore, was not subject to review under Section 6(b) of that Executive Order.

D. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the revisions are not considered substantive. This final rule is also exempt from the Regulatory Flexibility Act per 5 U.S.C. 553 (a)(2) because it applies to agency management. However, this final rule is being published to provide transparency in the promulgation of federal policies.

E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the Federal Travel Regulation do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

F. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 300–80

Government employees, Reporting and recordkeeping requirements, Travel and transportation expenses.

Dated: July 16, 2010.

Martha Johnson,

Administrator of General Services.

■ For the reasons set forth in the preamble, under 5 U.S.C. 5701–5739, GSA amends 41 CFR part 300–80 as set forth below:

PART 300–80—RELOCATION EXPENSES TEST PROGRAMS

■ 1. The authority citation for 41 CFR part 300–80 continues to read as follows:

Authority: 5 U.S.C. 5707, 5738, and 5739.

§ 300–80.4 [Amended]

■ 2. Amend § 300–80.4 by removing "10" and adding "12" in its place.

§ 300–80.6 [Amended]

■ 3. Amend § 300.80–6 by—
■ a. Removing the word "None."; and
■ b. Removing "Chapter 302 of this title." and adding "5 U.S.C. chapter 57, subchapter II." in its place.
■ 4. Revise § 300–80.7 to read as follows:

§ 300–80.7 How long is the duration of test programs?

The duration of a test program is up to four years from the date of authorization unless terminated prior to that time by the Administrator of General Services. The agency conducting a test program may also terminate the test program at any time by providing written notice of the termination to the Administrator of General Services. The Administrator of General Services may grant test program extensions of up to an additional four years (see § 300–80.8).

§ 300–80.9 [Removed]

■ 5. Remove § 300–80.9.

§ 300–80.8 [Redesignated as § 300–80.9]

■ 6. Redesignate § 300–80.8 as § 300–80.9.

■ 7. Add a new § 300–80.8 to read as follows:

§ 300–80.8 What must we do to apply for a test program extension?

The head of the agency or designee must submit a request to extend the test program to the Administrator of General Services (Attention: MTT), 1800 F Street, NW., Washington, DC 20405, not later than 120 days prior to the expiration of the test period. The request for extension must contain the test program results to that date and clearly enumerate the benefits, qualitatively or quantitatively or both, of granting a test program extension and must specify the duration of time for which an extension is requested.

■ 8. Amend newly redesignated § 300–80.9 by—
■ a. Removing the introductory text;
■ b. Removing in paragraph (a), "an approved test program" and adding "any test program approved or extended" in its place; and
■ c. Adding new paragraph (c) to read as follows:

§ 300–80.9 What reports are required for a test program?

* * * * *

(c) All reports must include quantitative or qualitative assessments, or both, clearly evaluating the results of the test program and enumerating benefits and costs.

[FR Doc. 2010–23887 Filed 9–23–10; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3000

Minerals Management: General

CFR Correction

In Title 43 of the Code of Federal Regulations, Part 1000 to End, revised as of October 1, 2009, on page 331, in

§ 3000.12, move paragraph (b) to below the table on page 332.

[FR Doc. 2010–24034 Filed 9–23–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1503

[Docket No. TSA–2009–0013]

RIN 1652–AA62

Revision of Enforcement Procedures

AGENCY: Transportation Security Administration, DHS.

ACTION: Final rule.

SUMMARY: The Transportation Security Administration (TSA) issues this final rule regarding TSA's investigative and enforcement procedures. TSA makes several minor changes to the final rule TSA issued on July 21, 2009. TSA extends the time for parties to reply to a petition for reconsideration or modification of a final decision and order of the TSA decision maker on appeal from 10 days after service to 30 days after service. Similarly, TSA extends the time for parties to reply to a motion from 10 to 30 days after service. Finally, TSA corrects an incorrect section reference.

DATES: Effective September 24, 2010.

FOR FURTHER INFORMATION CONTACT: Emily Su, Office of Chief Counsel, TSA–2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6002; telephone (571) 227–2305; facsimile (571) 227–1380; e-mail *emily.su@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Document

You can get an electronic copy using the Internet by—

(1) Searching the electronic Federal Docket Management System (FDMS) Web page at *http://www.regulations.gov;*

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html;* or

(3) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for "Research Center" at the top of the page.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within TSA's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT**. Persons can obtain further information regarding SBREFA on the Small Business Administration's Web page at *http://www.sba.gov/advo/laws/law_lib.html.*

Good Cause for Immediate Effective Date

This rule will be effective upon publication in the **Federal Register**. The Administrative Procedure Act, 5 U.S.C. 553, allows an agency, upon finding good cause, to make a rule effective immediately. There is good cause for making this final rule effective immediately. A final rule, published on July 21, 2009, is already in effect. 74 FR 36030. There is no need to provide advance notice that this final rule will become effective because this final rule is substantively the same as the July 21, 2009, final rule; the only changes in this final rule expand the period of time in which a party may respond to motions and final decision from 10 to 30 days.

Summary of the Rulemaking

On July 21, 2009, TSA published a final rule in the **Federal Register** (74 FR 36030) reorganizing and amending its Investigative and Enforcement Procedures. When TSA published the rule, TSA invited public comments on the rule until September 21, 2009. TSA received one letter to the public docket that raised a number of comments. This final rule responds to the comments and makes one minor procedural change and corrects a section reference, discussed below.

Response to Comments

Informal Conferences: The commenter stated that permitting an Informal Conference with an agency attorney or another agency official, as § 1503.421 provides, is beneficial for expedited resolution of cases. However, the commenter cautioned that agency personnel authorized to conduct such informal conferences must understand the TSA regulations and their intent and expressed the view that sometimes they do not.

TSA trains its attorneys and other agency officials so that they are well versed in any regulations at issue in an informal conference. TSA equips its attorneys and agency officials with proper knowledge and skills to address any relevant concerns at informal conference.

Enforcement of "TSA Requirements": Another comment recommended that TSA amend the regulation to make it clear that individuals may only be charged with violations of regulations or agency orders as to which "proper notice has been given pursuant to the Administrative Procedure Act." The commenter stated that, if TSA seeks to hold individuals responsible through the enforcement process for violating non-regulatory "TSA requirements" such as agency orders, Subpart G should be amended to make clear that § 1503.607 does not preclude the Administrative Law Judge (ALJ) from making a full factual record as to whether the "TSA requirement" at issue was properly applicable to the individual charged, including whether the individual charged received legally sufficient actual or constructive notice of the binding nature of the TSA requirement.

TSA agrees that persons must have notice of a requirement before TSA can enforce it. In the case of violation of a statutory provision, the provision's inclusion in the public laws of the United States establishes notice. In the case of a regulation published in the **Federal Register**, filing the document with the Office of the Federal Register establishes notice. In the case of another enforceable requirement, such as an agency order, the person charged must have had adequate notice of the requirement; an ALJ proceeding could include resolution of this issue.

Warning Notices, Letters of Correction: Another comment focused on language in § 1503.301 providing that, if TSA determines that an alleged violation does not require assessment of a civil penalty, an appropriate official may take administrative action, such as warning notices and letters of correction, in disposition of the case. The rule provides: "The issuance of a Warning Notice or Letter of Correction is not subject to appeal under this part." The commenter expressed the following objections to the absence of an appeal process for Warning Notices:

1. TSA has made mistakes in interpreting its rules, resulting in the incorrect adjudication of matters under investigation, leading to TSA issuing Warning Notices to innocent parties.

2. Improperly issued Warning Notices can result in future negative consequences, such as increased civil penalties, if the recipient of the Warning Notice is the subject of future enforcement actions. The commenter referenced the language of Subpart E—

Assessment of Civil Penalties by TSA, § 1503.425, Compromise Orders, (b)(5) to support the position that an improperly-issued Warning Notice may have negative consequences. Specifically, the commenter referenced the following statement: "A compromise order contains the following: (5) A statement that the compromise order will not be used as evidence of a prior violation in any subsequent civil penalty proceeding." The commenter suggested that, if TSA does not allow formal or informal appeals of Warning Notices, at a minimum TSA should incorporate similar language declaring that such Warning Notices will not be used as evidence of a prior violation in any subsequent civil proceeding.

3. The inability to seek redress of an improperly issued Warning Notice presents future risk to other innocent individuals; TSA errors may lead to similar actions against other individuals who may be accused, erroneously, of the same type of alleged violation.

TSA believes that the Warning Notice process is adequate to address these concerns. A Warning Notice does not constitute a legal finding of a violation; therefore, no formal appeal process is required. TSA generally affords persons the opportunity to respond to an investigation before TSA takes enforcement action, including the issuance of a Warning Notice. The most efficient and effective means for resolving allegations of noncompliance is for the person to respond to TSA inquiries promptly and thoroughly.

Penalties Against Individuals: The commenter acknowledged that TSA has the statutory authority to raise the maximum civil penalties assessed against individuals, but objected to TSA's doing so now in view of the recession, high unemployment rates, and stagnant economic growth. The commenter added that airline workers, including pilots, have suffered significant wage reductions. The commenter, a trade association that represents airline workers, expressed its view that airline workers are more likely to be the subject of penalties than other individuals because of the amount of time they spend at airports and transiting checkpoints; these activities might lead to potential charges of a violation of TSA regulations. The commenter recommended that TSA take these factors into account when TSA considers mitigating factors for purposes of proposing penalties. The comment noted that this should be the case particularly in regard to proposed penalties for first-time offenders.

As explained in the preamble to the rule published on July 21, 2009, TSA has adjusted the penalty amounts as required by statute. *See* 74 FR 36034. The Federal Civil Penalties Inflation Adjustment Act of 1990 (Adjustment Act), as amended,[1] includes a detailed formula for inflation adjustments. TSA recognizes that many parties may experience financial hardship due to the current economic environment. Hence, TSA always considers multiple factors, including financial distress, when assessing civil penalties. TSA uses a publicly available sanctions policy in assessing penalties. See *http://www.tsa.gov/research/laws/editorial_1504.shtm.* Finally, TSA disagrees with the view that airline workers' occupation should be considered a mitigating factor for assessing penalties. Individuals who spend considerable time in the aviation environment should be aware of TSA's requirements and take particular care to comply with them.

Formal Complaints: The commenter raised objections to the procedures for formal complaints in subpart I, § 1503.801. This provision of the rule allows any person to file a complaint with the TSA Administrator with respect to "any act or omission by any person in contravention of" any rules, regulations or provisions administered by the TSA. Paragraph (d) of that section provides that TSA will place complaints that meet the tests of Subpart I on its Complaint Docket, mail a copy to each person named in the complaint and, per paragraph (f), the person named in the complaint "must file an answer within 20 days after service of a copy of the complaint." Pursuant to paragraph (k), TSA maintains in the public docket "the complaint and other pleadings and official TSA records relating to the disposition of the complaint."

The commenter questioned TSA's legal authority for these procedures. The commenter also recommended that TSA consider adding a provision allowing TSA to assess penalties for those who file ill-founded, baseless or false charges against individuals, as well as a provision that would allow the individuals who are the subject of these charges to seek compensation for attorneys' fees and other economic losses incurred as a result of responding to false complaints.

TSA has legal authority for the provision stated in § 1503.801. The provision is based on 49 U.S.C. 46101, as amended by section 140(b) of the Aviation and Transportation Security Act, Public Law. 107–71 (ATSA). Moreover, § 1503.801(a) through (k) is substantively the same as § 1503.5(a) through (k) of the preceding regulation. If TSA were to conclude that a formal complaint consisted of false or baseless charges, TSA would dismiss the complaint and send written notification of the dismissal to the complainant and the person(s) named in the complaint.

[1] Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, Oct. 5, 1990, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Public Law 104–134, title III, Sec. 31001(s)(1), Apr. 26, 1996, 110 Stat. 1321–373; the Federal Reports Elimination Act of 1998, Public Law 105–362, title XIII, Sec. 1301(a), Nov. 10, 1998, 112 Stat. 3293.

Amendment of 49 CFR 1503.629, Motions and 49 CFR 1503.659, Petition To Reconsider or Modify a Final Decision and Order of the TSA Decision Maker on Appeal

Previously, § 1503.629(d) provided that parties must reply to motions not later than 10 days after service of the motion on the party. Similarly, § 1503.659(e) required a party to reply to a Petition to Reconsider or Modify a Final Decision and Order of the TSA Decision Maker on appeal within 10 days after service of the petition on that party. These time periods did not afford parties a sufficient time to reply, partly because parties often receive mail well after the date on which the regulations presume service. Moreover, the 10-day periods were inconsistent with other time periods in the regulation, such as § 1503.609 (30 days to file a Complaint), § 1503.611 (30 days to answer a Complaint), and § 1503.657(e) (35 days to file a reply brief in an appeal from an initial decision by TSA). For these reasons, TSA amends §§ 1503.629(d) and 1503.659(e) to provide that parties will have 30 days from service to reply.

Correction of Section Reference in § 1503.631(c)(2), Interlocutory Appeals

In the July 2009 rule, TSA reorganized part 1503 and moved § 1503.215 to § 1503.623, Withdrawal of complaint or request for hearing. TSA inadvertently did not change the section reference in § 1503.631(c)(2) to the appropriate section. In this rule, TSA replaces the incorrect reference to § 1503.215 with the correct reference to § 1503.623.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501. *et seq.*) requires that TSA consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations.

TSA has determined that there are no current or new information collection requirements associated with this rule.

Economic Impact Analyses

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order (E.O.) 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

Because this rule does not add any requirements to those in the July 21, 2009, final rule, TSA has not performed a cost/benefit analysis.

Executive Order 12866 Assessment

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993) provides for making determinations as to whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Order. Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including economic significance, which is defined as having an annual impact on the economy of $100 million. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues.

This regulation is not significant under E.O. 12866. This final regulation will have no economic impact because the regulation makes no substantive changes to 49 CFR part 1503.

Regulatory Flexibility Act Assessment

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), requires agencies to perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities when the Administrative Procedure Act (APA) requires notice and comment rulemaking. TSA has not assessed whether this rule will have a significant economic impact on a substantial number of small entities, as defined in the RFA. When an agency publishes a rulemaking without prior notice and an opportunity for comment, the RFA analysis requirements do not apply.

This rulemaking is a final rule that follows a final rule that TSA issued on July 21, 2009. Therefore, no RFA analysis is provided.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. TSA has assessed the potential effect of this rulemaking and has determined that it will not create any unnecessary obstacles to foreign commerce.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply and TSA has not prepared a statement under the Act.

Executive Order 13132, Federalism

TSA has analyzed this final rule under the principles and criteria of E.O. 13132, Federalism. We have determined that this action will not have a substantial direct effect on the States, or the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, have determined that this action does not have federalism implications.

Environmental Analysis

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

Energy Impact Analysis

The energy impact of the action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 49 CFR Part 1503

Administrative Practice and Procedure, Investigations, Law enforcement, Penalties, Transportation.

The Amendments

■ For the reasons set forth in the preamble, the Transportation Security Administration amends Chapter XII of Title 49, Code of Federal Regulations, as follows:

PART 1503—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

■ 1. The authority citation for part 1503 continues to read as follows:

Authority: 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 114, 20109, 31105, 40113–40114, 40119, 44901–44907, 46101–46107, 46109–46110, 46301, 46305, 46311, 46313–46314; Sec. 1413(i), Public Law 110–53, 121 Stat. 414 (6 U.S.C. 1142).

Subpart G—Rules of Practice in TSA Civil Penalty Actions

■ 2. In § 1503.629 revise paragraph (d) to read as follows:

§ 1503.629 Motions.

* * * * *

(d) *Reply to motions.* Any party may file a reply, with affidavits or other evidence in support of the reply, not later than 30 days after service of a written motion on that party. When a motion is made during a hearing, the reply may be made at the hearing on the record, orally or in writing, within a reasonable time determined by the ALJ. At the discretion of the ALJ, the moving party may file a response to the reply.

* * * * *

§ 1503.631 [Amended]

■ 3. In § 1503.631(c)(2) remove the reference "§ 1503.215" and add in its place the reference "§ 1503.623".

■ 4. In § 1503.659 revise paragraph (e) to read as follows:

§ 1503.659 Petition to reconsider or modify a final decision and order of the TSA decision maker on appeal.

* * * * *

(e) *Reply petitions.* Any other party may reply to a petition to reconsider or modify, not later than 30 days after service of the petition on that party, by filing a reply with the Enforcement Docket Clerk. A party must serve a copy of the reply on each party.

* * * * *

Issued in Arlington, Virginia, on September 17, 2010.

John S. Pistole,

Administrator.

[FR Doc. 2010–23985 Filed 9–23–10; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 970730185–7206–02]

RIN 0648–XY73

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Re-Opening of the 2010 Gulf of Mexico Recreational Red Snapper Season

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; re-opening.

SUMMARY: NMFS re-opens the recreational red snapper component of the reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf). NMFS previously determined the recreational red snapper quota would be reached by 12:01 a.m., local time, July 24, 2010. However, due to the Deepwater Horizon MC252 oil spill and the associated large-area fishery closure (fishery closed area) in the north-central Gulf where a substantial portion of the recreational red snapper fishing efforts occurs, the latest landings estimates indicate the quota was not reached by that date. Therefore, NMFS will re-open the recreational red snapper season, for eight consecutive weekends (Friday through Sunday), beginning October 1, 2010. The intent of this action is to provide fishermen the opportunity to harvest the recreational red snapper quota, and the opportunity to achieve the optimum yield for the fishery, thus enhancing social and economic benefits to the fishery.

DATES: The re-opening is effective each weekend, from 12:01 a.m., local time, Fridays, through 12:01 a.m., local time, Mondays, beginning October 1, 2010, until 12:01 a.m., local time, November 22, 2010. The season will then be closed until it reopens on June 1, 2011, the beginning of the 2011 recreational fishing season.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, telephone 727–824–5305, fax 727–824–5308, e-mail *Steve.Branstetter@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On June 2, 2010, NMFS implemented a recreational quota for Gulf red snapper of 3.403 million lb (1.544 million kg) and a commercial quota of 3.542 million lb (1.607 million kg) through a regulatory amendment (75 FR 23186, May 3, 2010). These quotas are based on the Councils(recommended total allowable catch of 6.945 million lb (3.150 million kg) for 2010 and subsequent fishing years, and the allocation ratios in the FMP.

The Magnuson-Stevens Act requires NMFS to close the recreational red snapper component of the Gulf reef fish fishery in Federal waters when the quota is met or projected to be met. Finalized 2009 recreational landings data indicated the recreational quota was projected to be met on or by July 23, 2010. Therefore, in the rule that published May 3, 2010 (75 FR 23186), NMFS announced the recreational red snapper fishing season would close at 12:01 a.m., local time, July 24, 2010, which constituted a 53-day fishing season.

Because of the Deepwater Horizon MC252 oil spill, NMFS subsequently closed a large area in the north-central Gulf to fishing (fishery closed area), resulting in lower than expected landings for recreational red snapper. Because the fishery closed area is located where a substantial portion of the recreational red snapper fishing occurs, the Council did not expect the recreational red snapper quota to be met by July 23rd. Therefore, at its June 2010 meeting, the Council requested NMFS publish emergency rulemaking to authorize the RA to re-open the recreational red snapper season after September 30th, the end of the fishing season. A proposed rule was published on August 16, 2010 (75 FR 49883) and NMFS requested public comment through August 31, 2010. NMFS published a final rule in the same issue of the **Federal Register**, authorizing the RA to re-open the recreational red snapper fishing season after September 30th.

Based on the most recent landings data, NMFS has determined that 32 percent of the available recreational quota was landed by the July 23rd closure date. Based on landings rates and the remaining recreational quota of approximately 2.3 million lb (1.1 million kg), NMFS has determined the recreational red snapper season can re-open. At its August 2010 meeting, the Council voted to re-open the season on eight consecutive Fridays, Saturdays, and Sundays, beginning at 12:01 a.m., local time, on October 1, 2010 and closing at 12:01 a.m., local time, on Monday, November 22, 2010 (24 fishing days). In the interim, weekend openings would start at 12:01 a.m., local time, on Fridays and stay open through 12:01 a.m., local time, on Mondays. The season will then be closed until 12:01 a.m., local time, June 1, 2011, the beginning of the 2011 recreational fishing season.

During the open period, the bag and possession limit for recreational Gulf red snapper is two fish. However, no red snapper may be retained by the captain and crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero.

During the closed period, the bag and possession limit for recreational Gulf red snapper is zero. A person aboard a vessel for which a Federal charter vessel/headboat permit for Gulf reef fish has been issued, must also abide by these closure provisions in state waters if Federal regulations are more restrictive than applicable state law.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B). Allowing prior notice and opportunity for public comment on the re-opening is unnecessary because the rule establishing the annual quota has already been subject to notice and comment, and all that remains is to notify the public that additional harvest remains in the established quota and, therefore, the fishery will re-open for a limited time period.

This rule relieves a restriction by re-opening the recreational red snapper season after September 30, the end of the fishing season. Because it relieves a restriction, this rule is not subject to the 30-day delayed effectiveness provision of the Administrative Procedures Act pursuant to 5 U.S.C. 553(d)(1).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 21, 2010.

Carrie Selberg,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–23992 Filed 9–21–10; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100713296–0452–02]

RIN 0648–BA06

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Emergency Rule to Authorize Re-Opening the Recreational Red Snapper Season

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency rule.

SUMMARY: NMFS issues this emergency rule to authorize the Regional Administrator, Southeast Region, NMFS (RA) to re-open the Gulf of Mexico (Gulf) recreational red snapper season after the September 30, 2010, end of the fishing season. NMFS has determined that the recreational red snapper quota was not met by the 12:01 a.m., local time, July 24, 2010, closure date. The BP Deepwater Horizon MC252 oil spill and the associated large-area fishery closure (fishery closed area) in the north-central Gulf are located where a substantial portion of the recreational red snapper fishing effort occurs. Therefore, the Gulf of Mexico Fishery Management Council (Council) requested NMFS publish this emergency rule. The intent of this rulemaking is to provide the RA the authority to allow fishermen the opportunity to harvest the recreational red snapper quota, and to achieve the optimum yield for the fishery, thus enhancing social and economic benefits to the fishery.

DATES: This emergency rule is effective September 24, 2010 through December 31, 2010.

ADDRESSES: Copies of the environmental assessment, the final regulatory flexibility analysis (FRFA), and the regulatory impact review for this rule may be obtained from the Southeast Regional Office, NMFS, 263 13th Avenue S., St. Petersburg, FL 33701; telephone 727–824–5305; fax 727–824–5308; e-mail *steve.branstetter@noaa.gov*; or may be downloaded from the SERO Web site at *http://sero.nfms.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, 727–824–5796.

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801, *et seq.* (Magnuson-Stevens Act). The Magnuson-Stevens Act provides the legal authority for the promulgation of emergency regulations under section 305(c) (16 U.S.C. 1355(c)).

On August 16, 2010, NMFS published a proposed emergency rule to grant the RA the authority to re-open the Gulf recreational red snapper season after September 30, and requested public comment (75 FR 49883). The rationale for the measures contained in this emergency rule is provided in the environmental assessment and the proposed emergency rule and is not repeated here.

Comments and Responses

A total of 139 comments were received on the proposed emergency rule. A summary of those comments, and NMFS responses, follows.

Comment 1: More than 50 percent of the comments expressed broad general support re-opening the recreational red snapper fishing season during 2010 without regard to specific timing. Another 25 percent specifically expressed support for re-opening later in the year and/or giving NMFS the authority to re-open the season after the September 30 end of the fishing season. At its August 2010 meeting, the Council recommended re-opening the recreational red snapper fishing season on eight consecutive weekends (Friday through Sunday) beginning October 1, 2010. Several comments received after this meeting expressed opinions regarding weekend openings versus opening during the week as well.

Response: This emergency rule gives the RA the authority to re-open the recreational red snapper fishing season after September 30, 2010. Without this rulemaking NMFS is only authorized to re-open the season through the end of the designated June 1 through September 30 fishing season. The recreational red snapper quota is established based on an allowable biological catch level determined from the results of a peer-reviewed and vetted stock assessment, which is based on the best scientific information available. This rulemaking will provide the opportunity for the recreational sector to harvest the remaining quota and achieve the Council's designated optimum yield (OY) for the fishery, thus enhancing social and economic benefits to fishermen and the tourism industries of Gulf coastal communities. The timing and duration of a re-opening will not affect the goal of harvesting the allowable catch established in accordance with the red snapper rebuilding plan, which seeks to achieve OY for the red snapper component of the reef fish fishery. NMFS will publish an additional rulemaking specifying the dates of a re-opening.

Comment 2: A few comments suggested that areas that had been open to fishing during the June 1 through July 23 recreational red snapper season should remain closed. Any re-opening of the season should be restricted to those areas that had been closed to all fishing because of BP Deepwater Horizon MC252 oil spill, but are now re-opened to fishing.

Response: The recreational red snapper quota is a Gulf-wide quota; it is not separated into regional components. Current regulations do not allow NMFS to designate fishing season openings for specific geographic regions. In addition, many areas are still closed to all fishing because of the BP Deepwater Horizon MC252 oil spill, and may not be re-opened to fishing during the recommended eight consecutive weekend openings. Re-opening the recreational red snapper fishing season to specific geographic regions would create substantial regulatory confusion for the public, and increase the difficulty of enforcement.

Comment 3: A few comments suggested that the recreational red snapper fishing season should remain closed for 2010. It was suggested NMFS should not be authorized to change the existing regulations intended to protect the red snapper stock just because the quota was not harvested. It would be irresponsible to re-open the recreational red snapper fishing season without first determining the effects of the BP Deepwater Horizon MC252 oil spill to the environment and associated fish stocks. A stock assessment should be conducted before allowing additional fishing mortality.

Response: NMFS acknowledges the concern for potential impact to fishery stocks from the BP Deepwater Horizon MC252 oil spill. Oil from the spill dispersed on the surface as well as within the water column. Red snapper spawn during summer and fall. Oil in surface waters could affect the survival of eggs and larvae; however, if oil has not dispersed to the ocean floor, the impacts to the demersal juvenile and adult red snapper and their benthic habitat may not be substantial. This anthropogenically-induced natural mortality on larvae caused by the oil spill could result in declines in recruitment in future year classes.

At this time, data are not available to demonstrate any specific adverse effects of the BP Deepwater Horizon MC252 oil spill on the red snapper resource or its habitat. As a result, no information is available indicating that the 2010 recreational red snapper quota should not be harvested. The current rebuilding schedule is intended to allow a specific harvest that will allow the stock to rebuild on a specified schedule, while providing for a quota-controlled harvest that will achieve maximum economic and social benefits. No information is available that indicates reduced harvests are necessary to maintain the current rebuilding schedule, i.e., to mitigate biological harm resulting from the oil spill. In the absence of biological harm or a need for beneficial mitigation (although not harvesting the quota would reduce overall fishing mortality), this would not be expected to result in greater economic and social benefits. In addition, substantial portions of the red snapper population are found in the northwestern and western Gulf (western Louisiana and Texas) and an increasing population of red snapper is re-establishing off the west Florida continental shelf. Spawning by these segments of the stock should mitigate the overall impact of any potentially compromised spawn by that part of the stock located in oil-affected areas.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c).

This emergency rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an FRFA. The FRFA describes the economic impact this emergency rule is expected to have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA analysis follows.

The purpose of this emergency rule is to authorize the Regional Administrator, Southeast Region, NMFS (RA), to re-open the Gulf of Mexico recreational red snapper season after the September 30, 2010, end of the fishing season in order to provide fishermen the opportunity to harvest the recreational red snapper quota, and to achieve the OY for the fishery, thus enhancing the social and economic benefits to the fishery. The Magnuson-Stevens Act provides the statutory basis for this emergency rule.

This emergency rule does not establish any new reporting, record-keeping, or other compliance requirements. No duplicative, overlapping, or conflicting Federal rules have been identified.

No significant issues were raised by public comments in response to the Initial Regulatory Flexibility Analysis (IRFA) and no changes were made in the emergency rule as a result of such comments.

This emergency rule will grant NMFS the authority to re-open the Gulf recreational red snapper season. Because this emergency rule will only grant the authority to re-open the red snapper fishing season, and not actually re-open the season (re-opening would only occur as a result of subsequent rule-making), this emergency rule is an administrative action and no direct effects on any small entities have been identified or are expected.

However, a reasonably foreseeable consequence of this emergency rule is the re-opening of the Gulf red snapper fishing season. If the recreational red snapper season is re-opened, federally permitted for-hire fishing businesses that sell services to fish for red snapper in the Gulf of Mexico would be expected to be directly affected. The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. A Gulf reef fish for-hire permit is required to harvest red snapper in the Federal waters of the Gulf of Mexico. During 2009, there were 1,424 valid (non-expired) Federal reef fish for-hire permits that allowed permit holders to fish during any portion of the year. Although the Federal for-hire permit does not distinguish between headboats and charter boats, an estimated 79 headboats operate in the Gulf of Mexico. It cannot be determined with available data how many of the for-hire vessels permitted to operate in the reef fish fishery fish for or harvest red snapper, either through directed effort or incidental harvest, so all permitted vessels are assumed, for this analysis, to comprise the universe of potentially affected vessels. The average charterboat is estimated to earn approximately $88,000 (2008 dollars) in annual revenues, while the average headboat is estimated to earn approximately $461,000 (2008 dollars).

The Small Business Administration has established size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in the for-hire fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $7.0 million (NAICS code 713990, recreational industries). Based on the average revenue estimates provided above, all for-hire vessels that would be expected to be directly affected by actual re-opening of the red snapper season are determined for the purpose of this discussion to be small business entities.

As stated previously, this emergency rule is an administrative action and no direct economic effects on any small entities have been identified or are expected.

For-hire vessels that would be directly affected by subsequent rule-making to re-open the red snapper season would be expected to receive an increase of approximately $4.4 million (2008 dollars) in net operating revenues (revenues minus non-labor variable operating costs) compared to not re-opening. As previously discussed, it cannot be determined how many of the for-hire vessels permitted to operate in the reef fish fishery fish for or harvest red snapper. If spread over all 1,424 vessels with Federal reef fish for-hire permits, this increase in net operating revenues would equate to an average of approximately $3,000 per vessel. However, not all for-hire vessels with Federal reef fish permits would be expected to benefit from re-opening the red snapper season, and some vessels would be expected to benefit more than others. Estimates of the average annual net operating revenues per vessel are not available, and estimates of the average annual gross revenues per vessel, provided above, are an inappropriate proxy because gross revenues do not account for operating expenditures. As a result, estimates of the average percentage increase in net operating revenues are not available. It is noted, however, that because these effects would only occur in response to subsequent rule-making, these effects would indirectly result from this emergency rule.

Because no direct effects on any small entities have been identified or are expected to occur as a result of this emergency rule, the issue of significant alternatives is not relevant.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d)(3), the Assistant Administrative for Fisheries (AA) finds good cause to waive the delay in effectiveness of this final emergency rule. This rule grants NMFS the authority to re-open the Gulf recreational red snapper season. The re-opening of the red snapper fishing season would only occur as a result of subsequent rule-making. This emergency rule is purely procedural in nature, and does not impose any new compliance requirements or reporting burdens on the public for which a delay in effectiveness would be necessary. For these reasons, the AA finds good cause to waive the 30-day delay in effectiveness of this rulemaking.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: September 20, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:AUTH≤

Authority:

16 U.S.C. 1801 *et seq.*

■ 2. In § 622.34, paragraph (m) is suspended and paragraph (v) is added to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(v) *Closure of the recreational fishery for red snapper.* The recreational fishery for red snapper in or from the Gulf EEZ is closed from January 1 through May 31. During the closure, the bag and possession limit for red snapper in or from the Gulf EEZ is zero.

[FR Doc. 2010–23993 Filed 9–21–10; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 090511911–0307–02]

RIN 0648–AX89

Fisheries of the Exclusive Economic Zone Off Alaska; Chinook Salmon Bycatch Management in the Bering Sea Pollock Fishery; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction to final rule.

SUMMARY: This document contains three corrections to the final rule pertaining to Fisheries of the Exclusive Economic Zone Off Alaska; Chinook Salmon Bycatch Management in the Bering Sea Pollock Fishery published on August 30, 2010. These corrections amend content within tables to eliminate potential confusion by the public.

DATES: Effective September 29, 2010.

FOR FURTHER INFORMATION CONTACT: Seanbob Kelly, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

A final rule was published in the **Federal Register** on August 30, 2010 (75 FR 53026) that revises several sections of regulations that pertain to the management of Chinook salmon bycatch in the Bering Sea subarea of the Bering Sea and Aleutian Islands Management Area (BSAI). This final rule applies to owners and operators of catcher vessels, catcher/processors, motherships, inshore processors, and the six Western Alaska Community Development Quota (CDQ) Program groups participating in the pollock (*Theragra chalcogramma*) fishery that is managed under the Fishery Management Plan for Groundfish of the BSAI.

The first error is an incorrect table number that exists within a table used to determine the amount of Chinook salmon associated with each CDQ group. The second and third errors occur in the "locate and remove" table. The "locate and remove" table is used to define specific technical changes in regulatory citations. The errors occurred in the listing of specific citation changes in this table. These changes are unnecessary and need to be removed because the citations are identified earlier for removal in the amendatory instructions. These errors should be corrected immediately to eliminate potential confusion by the regulated public.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be unnecessary and contrary to the public interest. These errors should be corrected immediately to eliminate potential confusion by the regulated public. If the effective date for these corrections is delayed to solicit prior public comment, these technical errors will not be corrected by the effective date of this final rule, thereby undermining the conservation and management objectives of the FMP. The AA further finds, pursuant to 5 U.S.C 553(d)(3), good cause to waive the thirty (30) day delayed effectiveness period for the reasons stated above.

NMFS is correcting these errors and is not making substantive changes to the document in rule FR Doc. 2010–20618 published on August 30, 2010 (75 FR 53026).

Need for Correction

Accordingly, the final rule published on August 30, 2010 (75 FR 53026), to be effective September 29, 2010, is corrected as follows:

§ 679.21 [*Corrected*]

1. On page 53061, in § 679.21 (f)(4)(i)(D), in the fourth column of the table, under the column heading "Reduce the B season allocation by the sum of the amount of Chinook salmon associated with each vessel or CDQ group not participating in an IPA:", correct the reference to "Table 43d" to read as "Table 47d".

§§ 679.7 and 679.26 [*Corrected*]

2. On page 53069, in the "locate and remove" table at the bottom of the page, under all four columns, remove line seven, that starts with, "§ 679.7(d)(18)" and remove line eleven that starts with "§ 679.26(c)(1)."

Dated: September 20, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–24024 Filed 9–23–10; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 75, No. 185

Friday, September 24, 2010

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AM28

Prevailing Rate Systems; Redefinition of the Shreveport, LA; Texarkana, TX; Milwaukee, WI; and Southwestern Wisconsin Appropriated Fund Federal Wage System Wage Areas

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The U.S. Office of Personnel Management is issuing a proposed rule that would redefine the geographic boundaries of the Shreveport, LA; Texarkana, TX; Milwaukee, WI; and Southwestern Wisconsin appropriated fund Federal Wage System (FWS) wage areas. The proposed rule would redefine Upshur County, TX, from the Texarkana wage area to the Shreveport wage area and Oconto County, WI, from the Southwestern Wisconsin wage area to the Milwaukee wage area. These changes are based on recent consensus recommendations of the Federal Prevailing Rate Advisory Committee to best match the counties proposed for redefinition to a nearby FWS survey area. No other changes are proposed for the Shreveport, Texarkana, Milwaukee, and Southwestern Wisconsin FWS wage areas.

DATES: We must receive comments on or before October 25, 2010.

ADDRESSES: Send or deliver comments to Jerome D. Mikowicz, Deputy Associate Director for Pay and Leave, Employee Services, U.S. Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200; e-mail *pay-performance-policy@opm.gov;* or FAX: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606–2838; e-mail *pay-performance-policy@opm.gov;* or FAX: (202) 606–4264.

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management is issuing a proposed rule that would redefine the geographic boundaries of the Shreveport, LA; Texarkana, TX; Milwaukee, WI; and Southwestern Wisconsin appropriated fund Federal Wage System (FWS) wage areas. This proposed rule would redefine Upshur County, TX, from the Texarkana wage area to the Shreveport wage area and Oconto County, WI, from the Southwestern Wisconsin wage area to the Milwaukee wage area.

OPM considers the following regulatory criteria under 5 CFR 532.211 when defining FWS wage area boundaries:

(i) Distance, transportation facilities, and geographic features;

(ii) Commuting patterns; and

(iii) Similarities in overall population, employment, and the kinds and sizes of private industrial establishments.

In addition, OPM regulations at 5 CFR 532.211 do not permit splitting Metropolitan Statistical Areas (MSAs) for the purpose of defining a wage area, except in very unusual circumstances (*e.g.,* organizational relationships among closely located Federal activities).

OPM recently completed reviews of the definitions of the Longview, TX and Green Bay, WI MSAs and, based on analyses of the regulatory criteria for defining wage areas, is proposing the changes described below. The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended these changes by consensus. These changes would be effective on the first day of the first applicable pay period beginning on or after 30 days following publication of the final regulations. FPRAC recommended no other changes in the geographic definitions of the Shreveport, Texarkana, Milwaukee, and Southwestern Wisconsin wage areas.

Longview, TX Metropolitan Statistical Area

Gregg, Rusk, and Upshur Counties, TX, comprise the Longview, TX MSA. The Longview MSA is currently split between the Shreveport, LA, and Texarkana, TX, wage areas. Gregg and Rusk Counties are part of the area of application of the Shreveport wage area and Upshur County is part of the area of application of the Texarkana wage area.

Based on an analysis of the regulatory criteria for Gregg County, the core county in the Longview MSA, we recommend that the entire Longview MSA be defined to the Shreveport area of application. The distance criterion for Gregg County favors the Shreveport wage area more than the Texarkana wage area. All other criteria are inconclusive. However, even though the commuting patterns criterion is inconclusive, about 10 times as many people currently commute from Gregg County into the Shreveport survey area (0.47 percent of the resident workforce) than into the Texarkana survey area (0.05 percent). Based on this analysis, we believe Gregg County is appropriately defined to the Shreveport wage area. Since there appear to be no unusual circumstances that would permit splitting the Longview MSA, OPM proposes to redefine Upshur County to the Shreveport wage area so that the entire Longview MSA is in one wage area. There are currently no FWS employees working in Upshur County.

Green Bay, WI Metropolitan Statistical Area

Brown, Kewaunee and Oconto Counties, WI, comprise the Green Bay, WI MSA. The Green Bay MSA is currently split between the Milwaukee, WI, and Southwestern Wisconsin wage areas. Brown and Kewaunee Counties are part of the area of application of the Milwaukee wage area and Oconto County is part of the area of application of the Southwestern Wisconsin wage area.

Based on an analysis of the regulatory criteria for Brown County, the core county in the Green Bay MSA, we recommend that the entire Green Bay MSA be defined to the Milwaukee wage area. The distance criterion for Brown County favors the Milwaukee wage area more than the Southwestern Wisconsin wage area. All other criteria are inconclusive. Based on the mixed nature of our regulatory analysis findings, we believe Brown County is appropriately defined to the Milwaukee wage area. Since there appear to be no unusual circumstances that would permit splitting the Green Bay MSA, OPM proposes to redefine Oconto County to the Milwaukee wage area so that the entire Green Bay MSA is in one wage area. There are currently no FWS employees working in Oconto County.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

John Berry,

Director, U.S. Office of Personnel Management.

Accordingly, the U.S. Office of Personnel Management is proposing to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix C to subpart B is amended by revising the wage area listings for the Shreveport, LA; Texarkana, TX; Milwaukee, WI; and Southwestern Wisconsin wage areas to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

LOUISIANA

* * * * *

Shreveport

Survey Area

Louisiana: (parishes)
- Bossier
- Caddo
- Webster

Area of Application. Survey Area Plus:

Louisiana: (parishes)
- Bienville
- Claiborne
- De Soto
- East Carroll
- Jackson
- Lincoln
- Morehouse
- Ouachita
- Red River
- Richland
- Union
- West Carroll

Texas:
- Cherokee
- Gregg
- Harrison
- Panola
- Rusk
- Upshur

* * * * *

TEXAS

* * * * *

Texarkana

Survey Area

Texas:
- Bowie

Arkansas:
- Little River
- Miller

Area of Application. Survey Area Plus:

Texas:
- Camp
- Cass
- Franklin
- Marion
- Morris
- Red River
- Titus

Arkansas:
- Columbia
- Hempstead
- Howard
- Lafayette
- Nevada
- Sevier

* * * * *

WISCONSIN

* * * * *

Milwaukee

Survey Area

Wisconsin:
- Milwaukee
- Ozaukee
- Washington
- Waukesha

Area of Application. Survey Area Plus:

Wisconsin:
- Brown
- Calumet
- Door
- Fond du Lac
- Kewaunee
- Manitowoc
- Oconto
- Outagamie
- Racine
- Sheboygan
- Walworth
- Winnebago

Southwestern Wisconsin

Survey Area

Wisconsin:
- Chippewa
- Eau Claire
- La Crosse
- Monroe
- Trempealeau

Area of Application. Survey Area Plus:

Wisconsin:
- Adams
- Barron
- Buffalo
- Clark
- Crawford
- Dunn
- Florence
- Forest
- Jackson
- Juneau
- Langlade
- Lincoln
- Marathon
- Marinette
- Menominee
- Oneida
- Pepin
- Portage
- Price
- Richland
- Rusk
- Shawano
- Taylor
- Vernon
- Vilas
- Waupaca
- Waushara
- Wood

Minnesota:
- Fillmore
- Houston
- Wabasha
- Winona

* * * * *

[FR Doc. 2010–23956 Filed 9–23–10; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0857; Directorate Identifier 2010–NM–156–AD]

RIN 2120–AA64

Airworthiness Directives; Koito Industries, Ltd., Seats and Seating Systems Approved Under Technical Standard Order (TSO) TSO–C39b, TSO–C39c, or TSO–C127a

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Koito Industries, Ltd., seats and seating systems approved under TSO–C39b, TSO–C39c, or TSO–C127a. This proposed AD would require determining if affected seats and seating systems and their components are compliant with certain FAA regulations, and removing those seats, seating systems, and their components from the affected fleet that are shown to be unsafe. This proposed AD results from a determination that the affected seats and seating systems may not meet certain flammability and strength criteria. Failure to meet strength criteria could result in injuries to the flightcrew and passengers during emergency

landing conditions. In the event of an in-flight or post-emergency landing fire, failure to meet flammability criteria could result in an accelerated propagation of fire. We are proposing this AD to prevent accelerated fires and injuries to the flightcrew and passengers.

DATES: We must receive comments on this proposed AD by November 23, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:
Patrick Farina, Aerospace Engineer, Cabin Safety Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0857; Directorate Identifier 2010–NM–156–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

In January 2009, in accordance with the FAA's bilateral agreement with Japan Civil Aviation Bureau (JCAB), the JCAB contacted us and advised of non-compliance issues with the Koito seats. We were later advised that the JCAB had been notified of the issues by a whistleblower who reported discrepancies between materials used in production seats and the material of test articles used for showing compliance to flammability requirements. The falsification of certification records, which violates section 21.2 of the Federal Regulations (14 CFR 21.2), was first determined to result in possible non-compliance with the flammability requirements of § 25.853 of the Federal Aviation Regulations (14 CFR 25.853). At that time, we evaluated whether the disclosed possible non-compliance with the TSO significantly affected compliance with flammability criteria and determined that there was not a safety-of-flight issue, so we did not issue an AD.

In November 2009, the JCAB reviewed the safety of all in-service seats, which prompted Koito Industries to disclose additional discrepancies, including the falsification of static, dynamic, and flammability testing on delivered seats. Failure to meet strength criteria could result in injuries to the flightcrew and passengers during emergency landing conditions. In the event of an in-flight or post-emergency landing fire, failure to meet flammability criteria could result in an accelerated propagation of fire.

In December 2009, the JCAB and the FAA concluded that all TSO approvals for Koito Industries, Ltd., must be assumed to be non-compliant to the TSO and, by extension, to the regulations. Therefore, all such seats have potential unsafe conditions.

Approval Basis for TSO Seats

The static, dynamic, and flammability testing requirements include sections 25.561, 25.562, and 25.853 and Appendix F of the Federal Aviation Regulations:

- Section 25.561 contains required static loads for emergency landing conditions. Amendment 25–64, effective June 16, 1988, increased the static strength requirements in certain load cases.
- Section 25.562, which was created by Amendment 25–64, added dynamic testing requirements and quantified injury criteria and considerations for egress for the new requirements. These criteria improve the level of safety for airplanes that include this amendment level in the certification basis, while older airplanes are not required to meet these criteria.

The applicable amendment level of these requirements for a seat installation is dependent on the certification basis of the airplane on which the seats are installed. Because this proposed AD is applicable to all affected seats—regardless of the airplane on which they are installed—we use the current amendment levels of these regulations in the required actions of this proposed AD.

We recognize that an aircraft may have a certification basis that does not include 14 CFR 25.562, but has TSO–C127a seats installed. In that case, although the seats are not required to meet 14 CFR 25.562(b)(2) and (c)(7) by the airplane certification basis, they must still comply with the requirements of this proposed AD, which is written against the seats. However, an operator in this situation may request approval of an alternative method of compliance using the airplane certification basis as justification.

Establishing the Level of Safety for the Seats

Amendment 25–64 was based on accident investigation and dedicated research, after we determined that meeting the emergency load conditions in earlier amendment levels did not ensure adequate performance in an actual accident. We developed dynamic testing criteria with increased load factors as compared to the static strength criteria. These new criteria were intended to achieve the type of structural performance that the static strength criteria were meant to provide, but could not ensure.

In addition, other aspects of emergency landing safety were addressed at that time, which resulted in quantified injury criteria (such as implementation of the Head Injury Criterion (HIC)) and considerations for permanent structural deformations that might affect egress. These injury criteria, while a significant improvement in safety, are not as critical as the dynamic structural retention criteria, and will not be applied in this proposed AD because the primary safety function provided by seats and restraint systems is to remain intact in the event of an accident and provide energy management to allow occupant survival. The new injury criteria provide enhancements beyond this primary function. For this proposed AD, the injury criterion to be used is that the seat and seating system must exhibit no sharp edges during the assessment made for head injury protection. However, in order to make sure that assessment is valid, the seats in question must be shown to incorporate any specific design features or characteristics called out by the drawings for the purposes of reducing head injury.

Section 25.853 of the Federal Aviation Regulations (14 CFR 25.853) contains fire protection requirements for compartment interiors, and specifies which test criteria in Appendix F of 14 CFR part 25 must be met. With respect to flammability, the most significant safety element of the seat is the cushion/upholstery system. In 1984, we adopted new standards for seat cushion fire resistance in Amendment 25–59, dated October 26, 1984, by adding a new part II to Appendix F of 14 CFR part 25. These requirements were mandated to be retrofitted on the existing fleet. Since that time, the relevant performance standards for seats and seat cushions have been modified to incorporate this requirement as well.

While evidence indicates that many parts other than the cushion/upholstery system on the affected Koito seats and seating systems may not meet the Bunsen burner test requirements of part I in Appendix F of 14 CFR part 25, we consider that these non-compliances are not unsafe. The fire threat posed by these parts is of a lower order (*i.e.,* they are smaller and spread apart on the seat), and the materials are typical aircraft materials with performance in a fire that is predictable based on past tests and usage.

Unsafe Condition

We have determined that falsification of the various tests for the TSO could result in the following unsafe conditions during emergency landing conditions and in the event of an in-flight or post-emergency landing fire:

- Static failure (non-compliance with 14 CFR 25.561): Broken components may cause sharp edges and become injurious to the occupant, or fail to retain the occupant, when seats and seating systems do not comply with this regulation.
- Dynamic failure (non-compliance with 14 CFR 25.562): Leg injuries, lumbar/spinal injury, head injury, seat structure yielding leading to occupant entrapment, and failure to retain the occupant may occur when seats and seating systems do not comply with this regulation.
- Fire protection/flammability (non-compliance with 14 CFR 25.853): In-flight and post-emergency landing fires may be accelerated when seat materials do not comply with this regulation.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require determining if affected Koito Industries, Ltd., seats and seating systems, approved under TSO–C39b, TSO–C39c, or TSO–C127a, are compliant with specific FAA regulations containing flammability, static strength, and dynamic strength criteria. This proposed AD would also require removing seats and components that are shown to be unsafe.

TABLE—SUMMARY OF PROPOSED ACTIONS AND REQUIREMENTS

Action & compliance time	Regulation & safety requirement		
	Structure	Flammability (See footnote 2)	Injury (See footnote 3)
May remain in service	Meets 14 CFR 25.562(b)(2) and (c)(7), Amendment level 25–64.	Meets 14 CFR 25.853(c), Amendment level 25–116.	No sharp edges.
Replace within 6 years	Meets 14 CFR 25.561(b)(3)(ii) and (iii), Amendment level 25–64.	Meets 14 CFR 25.853(c), Amendment level 25–116.	No sharp edges.
Replace within 2 or 3 years (*See* Footnote 1).	Does not meet 14 CFR 25.561	Does not meet 14 CFR 25.853(c)	Has sharp edges (*See* Footnote 4).

Footnotes:
1. Seats not meeting the criteria of 14 CFR 25.561 or seats exhibiting sharp edges must be replaced within 2 years; seat cushions not meeting the criteria of 14 CFR 25.853(c) must be replaced within 3 years.
2. Seat cushions replaced to meet 14 CFR 25.853(c) should have consistent lumbar load properties with cushions shown to meet the lumbar criteria. Otherwise, a lumbar load test is required.
3. Predicated on design philosophy being maintained for safety critical parts.
4. Sharp edges would have been produced in the original tests, or in the tests required to meet this AD.

The Role of the Koito Tests Performed Under the Supervision of JCAB

Once the JCAB was aware of the fraudulent behavior, they began a process to re-qualify all of the suspect seat designs. In doing so, they reviewed the detailed designs and grouped them according to similarities that would enable tests of one model to substantiate a similar model. This process involved critical-case determinations and a survey of the designs of the seats in service. To address the JCAB orders, Koito produced new seats and seating systems per the production drawings and performed all the required certification tests on them. The results of these tests are intended to gain an understanding of the state of the fleet and prioritize remedial actions, as necessary.

However, the results of these tests may not be entirely usable. While it is very likely that any tests that fail the requirement on the newly produced seats would also fail on seats in service, the reverse may not be true. Due to the falsification of records and drawing control issues, seats in service might not conform to their production drawings. Thus, successful tests of a newly produced seat cannot automatically be used to support seats in service unless the relevant detail design parameters can be verified as consistent between the two. If an operator (or an airframe manufacturer on behalf of an operator) can show that the seats in their fleet match the seat tested to support the JCAB investigation, then those data could be used to show compliance with this proposed AD. Each situation will be handled on a case by case basis.

The Role of the Airframe Manufacturers (Airbus and Boeing) in Helping Airlines Establish the Status of Their Seats

While this proposed AD is applicable to operators of airplanes with the affected seats installed, two airframe manufacturers involved, Airbus and Boeing, may be in a position to assist in complying with the requirements of the proposed AD. This is because many of the seat models affected are similar among different operators, and data gathered to support one seat model may also be used to support other models. Boeing and Airbus have information on which models are similar to each other, and should be able to assist operators in sharing information so that no more than one operator would conduct what amounts to the same tests. However, for this to work, both the airlines and the manufacturers must cooperate and share information. Based on preliminary discussions, we understand that the companies involved do intend to cooperate in order to minimize costs. In fact, much of the grouping of similar seats has already been accomplished by the JCAB in their efforts to ascertain the status of the various designs. This should simplify the process of identifying the models that must be tested.

Data the FAA Will Accept To Demonstrate Compliance With the Proposed AD

Compliance with this proposed AD would require data to support three types of assessments:

- Structural performance;
- Flammability; and
- Injury prevention.

For the structural performance requirements, test data will be necessary. These data should be generated under an approved test plan and would require oversight of an airworthiness authority (or delegated agent). Tests conducted to support Koito Technical Standard Order Authorization (TSOA) are not acceptable. As noted above, tests conducted as part of the JCAB investigation may be acceptable if the conformity of the seats in service can be verified. Otherwise, new data are needed.

Similarly, for the flammability data, we will require that tests are conducted under an approved test plan or with the oversight of an aviation authority. We are aware of past Koito burner testing conducted at test facilities that were not done in accordance with FAA-approved test methods. Data generated to support the JCAB's investigation must be done in accordance with FAA-approved test methods. In this case, the simplest solution for an operator may be to acquire new cushions. However, if operators choose to try and substantiate their cushions, they might need to fabricate test samples using actual cushions. Since actual cushions and test cushions are of different shapes and sizes, several production cushions will likely be needed to make one test sample set. Also, since upholstery is one area of customization between airlines, it is unlikely that one operator's data can support another. In this case, an operator should consult with the FAA in making test samples so that valid results are produced.

For injury criteria, we will accept photographic evidence from the Koito TSO tests to determine whether there are any sharp edges (this would require that the tests in question are shown to be valid). We will accept data from any of the tests performed to meet the other requirements of this proposed AD.

Limitations on Seats Found Not To Be Fully Compliant, but Are Safe to Remain in Service

Because this proposed AD will not require full compliance with every applicable regulation, seats on which the requirements of this proposed AD are completed successfully and are permitted to remain in service are limited in how they can be used. That is, unless they are shown to fully comply with the regulatory requirements, this proposed AD would restrict the installation of such seats and would require specific marking. These seats can be used as a direct spare for the same part number seat. However, any other use of such seats would be considered a new installation approval and would be required to comply with all regulations. Thus, seats not meeting all regulations could not be installed except as noted above, and if removed from an approved arrangement, would have to be destroyed or rendered unusable in some other manner acceptable to the FAA.

In addition, if these seats are re-installed, they would have to be marked in accordance with paragraph (g) of this AD so that their status is known to any person who inspects them.

Replacement Components

Wear-out component replacement parts such as food trays, arm rest covers, and non-structural members may be manufactured and installed on seats affected by this proposed AD until the compliance time specified in this proposed AD. These parts must comply with flammability and injury prevention requirements. Parts produced under 14 CFR part 43, parts manufacturer approval (PMA) through licensing agreement, or PMA through identicality that could be based on fraudulent data would require an assessment of their compliance.

Costs of Compliance

We estimate that this proposed AD would affect 40,365 passenger seats installed on airplanes in the U.S. fleet. There are 278 airplanes of U.S. registry. The average labor rate is $85 per work-hour.

The estimated cost to determine if the affected seats and seating systems and their components are in compliance (*i.e.,* estimate the cost of static, dynamic and flammability testing, labor) is approximately $100,000 for the U.S. fleet. The estimated cost of the consumed article such as the seat row and materials consumed for flammability testing is approximately $490,000 for the U.S. fleet. The estimated cost to remove affected seats and seating systems and their components is approximately $285,000 for the U.S. fleet (this estimate assumes that the removal of all seats and seating systems in the fleet). The total estimated cost of this proposed AD for the U.S. fleet is $875,000.

Operators may need to replace only certain components. It is not feasible to include the cost of individual components in this proposed AD because we have no way of determining which components may need replacement.

Operators may need to replace the affected seat with a new seat. The following table provides the estimated costs for U.S. operators to replace the different types of seats. We have no way of determining how many seats may need to be replaced after testing is done to determine if the seats are in compliance. Certain operators may need to replace any type of seat that are generalized by description and estimated per seat cost in the following table.

TABLE—SEAT REPLACEMENT COST ESTIMATES

Seat style/class	Aircraft style, foot rest, and recline mechanism	Cost per passenger seat
Economy	Narrow/Wide Body; Mechanical	$2,300
First, Business	Narrow Body; Mechanical	$7,500
Business	Wide Body; Mechanical	$10,000
Business	Wide Body; Electrical	$25,000 to $35,000
First	Wide Body; Lay flat single place, Electrical	$75,000 to $150,000

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866,

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Koito Industries, Ltd: Docket No. FAA–2010–0857; Directorate Identifier 2010–NM–156–AD.

Comments Due Date

(a) We must receive comments by November 8, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Koito Industries, Ltd., seats and seating systems having a model number identified in Table 1 of this AD that are approved under technical standard order (TSO) TSO–C39b, TSO–C39c, or TSO–C127a, and installed on, but not limited to, airplanes of the manufacturers identified in Table 2 of this AD, all type certificated models in any category.

TABLE 1—SEAT MODELS

Model Numbers
AFS–105, AFS–136,
AFS–235, AFS–315,
ARS–183, ARS–189, ARS–190,
ARS–200, ARS–242, ARS–242–TA, ARS–254, ARS–255, ARS–263, ARS–276, ARS–277, ARS–281, ARS–289,
ARS–29, ARS–29–03,
ARS–304, ARS–308, ARS–311, ARS–311–A, ARS–311–B, ARS–336, ARS-339, ARS–341, ARS–347 ARS–352, ARS–354, ARS–357, ARS–360, ARS–384, ARS–385, ARS–392, ARS-397, ARS–398,
ARS–415, ARS–417, ARS–418, ARS–419, ARS–423, ARS–424, ARS–425, ARS-427, ARS-431, ARS–437, ARS–446, ARS–447, ARS–448, ARS–451, ARS–452, ARS–465, ARS-478, ARS–480, ARS–482, ARS–483, ARS–493, ARS-494,
ARS–507, ARS–510, ARS–511, ARS–514, ARS–516, ARS–518, ARS–527, ARS–542, ARS-543, ARS–550, ARS–552, ARS–553, ARS–554, ARS–571, ARS–574, ARS–577, ARS-588, ARS–589, ARS–591, ARS–592, ARS–593, ARS–594, ARS–595, ARS–596, ARS-597, ARS–598, ARS–599,
ARS–600, ARS–601, ARS–604, ARS–605, ARS–607, ARS–610, ARS–611, ARS–613, ARS-615, ARS–616, ARS–617, ARS–620, ARS–626, ARS–627, ARS–629, ARS–636, ARS-641, ARS–642, ARS–643, ARS–644, ARS–646, ARS–647, ARS–649, ARS–651, ARS-652, ARS–657, ARS–658, ARS–659, ARS–667, ARS–668, ARS–669, ARS–670, ARS-671, ARS–672, ARS–673, ARS–674, ARS–694, ARS–697,
ARS–704, ARS–707, ARS–709, ARS–710,
ARS–813, ARS–814, ARS–815, ARS–823, ARS–831, ARS–832, ARS–833, ARS–835, ARS-836, ARS–837, ARS–838, ARS–840, ARS–841, ARS–843, ARS–844, ARS–846, ARS-847, ARS–849, ARS–851, ARS–852, ARS–853, ARS–857, ARS–858, ARS–859, ARS-861, ARS–862, ARS–869,
ASS–197D,
ASS–215,
ASS–30, ASS–30–1,
B–317,
F11M11,
F44A33,

TABLE 1—SEAT MODELS—Continued

Model Numbers
P11B31, P11B33, P11M93, P21B33, P21B35, P21B73, P22A23, P32B73, P52B41, P56B63, PB7–2001, T–316, Y11B31, Y11B33, Y11B73, Y15B73, Y21A23, Y21B73, Y27B73, YE1B35, YG7B35, YH1B73, YK2B73.

TABLE 2—AFFECTED AIRPLANES

Manufacturer	Product subtype
Airbus	Transport Airplane.
The Boeing Company	Transport Airplane.
McDonnell Douglas Corporation	Transport Airplane.
Mitsubishi Heavy Industries, Ltd.	Transport Airplane.
Fokker Services B.V.	Transport Airplane.

Subject

(d) Air Transport Association (ATA) of America Code 25: Equipment/Furnishings.

Unsafe Condition

(e) This AD results from a determination that the affected seats and seating systems may not meet certain flammability, static strength and dynamic strength criteria. Failure to meet static and dynamic strength criteria could result in injuries to the flightcrew and passengers during emergency landing conditions. In the event of an in-flight or post-emergency landing fire, failure to meet flammability criteria could result in an accelerated fire. The Federal Aviation Administration is issuing this AD to prevent accelerated fires and injuries to the flightcrew and passengers.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Determination of Compliance and Removal

(g) Within 2 years after the effective date of this AD, determine if the seats and seating systems and their components are compliant with FAA regulations, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. For a method to be approved, the approval must specifically refer to this AD. Before re-installing any seat or seating system, modify the existing TSO tag by defacing the TSO number and letter of designation, e.g., overstrike the TSO identification with an "X" (such as "TSO–C127a" is defaced to look like "XXXXXXXXXX"), and add a tag that specifies non-compliance to the TSO number and letter designation, this AD number, and removal date if applicable.

Note 1: Determining if the seats and seating systems and their components are compliant may be made by independent re-qualification of the affected TSO article that has thorough control of the design and production process.

Note 2: Components of seats and seating systems include any non-metallic exposed part, assembly, or item. A component can include a seat cushion, recline cable, hook and loop (hook and loop is a generic term for Velcro), leather cover that is glued to seat, head rest, or arm cap.

(1) For Koito Industries, Ltd., seats approved under TSO–C39b or TSO–C39c that are not shown to be compliant with 14 CFR 25.561(b)(3)(ii) and 14 CFR 25.561(b)(3)(iii): Within 2 years after the effective date of this AD, remove the non-compliant seats.

(2) For Koito Industries, Ltd., seating systems approved under TSO–C127a that are not shown to be compliant with either of the regulations specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD: Within 2 years after the effective date of this AD, remove the non-compliant seating systems.

(i) 14 CFR 25.561(b)(3)(ii) and 14 CFR 25.561(b)(3)(iii).

(ii) 14 CFR 25.562(b)(2), and 14 CFR 25.562(c)(7).

(3) For Koito Industries, Ltd., seating systems approved under TSO–C127a that are shown to be compliant with 14 CFR 25.561(b)(3)(ii) and 14 CFR 25.561(b)(3)(iii), but are not shown to be compliant with 14 CFR 25.562(b)(2), and 14 CFR 25.562(c)(7): Within 6 years after the effective date of this AD, remove the non-compliant seating systems.

(4) For Koito Industries, Ltd., seats approved under TSO–C39b or TSO–C39c and seating systems approved under TSO–C127a that are shown to exhibit sharp or injurious surfaces in testing conducted to satisfy the original TSO authorization program, or subsequent verification tests in accordance with this AD: Within 2 years after the effective date of this AD, remove the non-compliant seats and seating systems.

(5) For components of Koito Industries, Ltd., seats approved under TSO–C39b or TSO–C39c and components of seating systems approved under TSO–C127a that are not shown to be compliant with 14 CFR 25.853(c): Within 3 years after the effective date of this AD, remove the non-compliant components. If a seat cushion is replaced, the replacement seat cushion must have consistent seat bottom stiffness and seat reference point locations using the guidance found in paragraph 9 of Appendix 3 of FAA Advisory Circular 25.562–1B, dated January 10, 2006.

Parts Installation

(h) As of the effective date of this AD, no person may install any Koito Industries, Ltd., seats and seating systems having any model number identified in Table 1 of this AD that are approved under Technical Standard Order (TSO) TSO–C39b, TSO–C39c, or TSO–C127a on any airplane; and no person may install any component of any affected seat and seating system on any airplane, unless the component is shown to meet the applicable airworthiness requirements; except that a seat, seating system, or component may be re-installed on the airplane from which it was originally removed, provided it is removed from service within the applicable compliance time specified in this AD. Non-compliant seats and seating systems and their components that are removed from service are not eligible for installation on another airplane or by another airline or any other aviation entity.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Patrick Farina, Aerospace Engineer, Cabin Safety Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on September 17, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–23936 Filed 9–23–10; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2009–0312; SW FRL–9206–9]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to grant a petition submitted by Eastman Chemical Company–Texas Operations (Eastman) to exclude (or delist) certain solid wastes generated by its Longview, Texas, facility from the lists of hazardous wastes. EPA used the Delisting Risk Assessment Software (DRAS) Version 3.0 in the evaluation of the impact of the petitioned waste on human health and the environment.

DATES: Comments must be received on or before October 25, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–RCRA–2009–0312 by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: peace.michelle@epa.gov.*
3. *Mail:* Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–C, 1445 Ross Avenue, Dallas, TX 75202.
4. *Hand Delivery or Courier.* Deliver your comments to: Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–C, 1445 Ross Avenue, Dallas, TX 75202. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: For further technical information concerning this document or for appointments to view the docket or the Eastman facility petition, contact Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–C, 1445 Ross Avenue, Dallas, TX 75202, by calling (214) 665–7430 or by e-mail at *peace.michelle@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving Eastman Chemical Company's delisting petition as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: September 8, 2010.

Bill Luthans,

Acting Director, Multimedia Planning and Permitting Division.

[FR Doc. 2010–23962 Filed 9–23–10; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 75, No. 185

Friday, September 24, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Overcoming Barriers to Wildland Fire Defensible Space Behaviors

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection, Overcoming Barriers to Wildland Fire Defensible Space Behaviors.

DATES: Comments must be received in writing on or before November 23, 2010 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to James Absher, Forest Service, U.S. Department of Agriculture, 4955 Canyon Crest Drive, Riverside, CA 92507. Comments also may be submitted via e-mail to: *jabsher@fs.fed.us.*

The public may inspect comments received at Forest Service Reception, 4955 Canyon Crest Drive, Riverside, CA during normal business hours. Visitors are encouraged to call ahead to 951–680–1500 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: James Absher, Pacific Southwest Research Station, Forest Service, 951–680–1500. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 between 8 a.m and 8 p.m, Eastern Standard time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Overcoming Barriers to Wildland Fire Defensible Space Behaviors.

OMB Number: 0596–New.

Type of Request: New.

Abstract: Recent wildfires in the Western United States highlight the need for understanding the human dimensions of wildfire management, especially for policies and programs that affect property losses in the wildland urban interface (WUI). Because the impacts of wildland fire extend beyond public land boundaries into the private communities lying on their periphery, understanding the public's response to the loss of both public and private property is important.

Information will be collected through a mail survey of WUI residents. Initial surveys will focus on Colorado Front Range homeowners. Respondents will be chosen to reflect a variety of setting attributes such as distance from wildlands, recent fire history, community preparedness actions, and local fire code differences. The survey will provide information regarding barriers to participating in fire hazard reduction programs in the wildland-urban interface and basic socio-demographics. Participation in the survey will be strictly voluntary.

The survey is necessary to identify obstacles that prevent residents from adopting defensible space behaviors and understand residents' perceptions of their roles and responsibilities. This information collected will help wildland fire managers and researchers (1) identify practical steps for reducing barriers to implementing defensible space behaviors at an individual and neighborhood level and (2) develop future risk reduction programs.

A Forest Service or cooperating researcher will collect and analyze the data. Additionally, in order to ensure anonymity, personal information will not be stored with contact information at any time, and contact information will be purged from researcher files once data collection is complete.

Estimate of Annual Burden: 20 minutes per respondent.

Type of Respondents: Individual homeowners who currently live in the wildland-urban interface, age 18 or older.

Estimated Annual Number of Respondents: 3,000.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,000 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: September 17, 2010.

Carlos Rodriguez-Franco,

Acting Deputy Chief, Forest Service, Research and Development.

[FR Doc. 2010–23918 Filed 9–23–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Central Idaho Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 110–343), the Salmon-Challis National Forest's Central Idaho Resource Advisory Committee will conduct a business meeting which is open to the public.

DATES: Thursday, October 7, 2010, beginning at 1 p.m.

ADDRESSES: Public Lands Center, 1206 South Challis Street, Salmon, Idaho.

SUPPLEMENTARY INFORMATION: Agenda topics will include review of RAC 2010 projects, planning for the 2011 project approval meetings and other RAC business. The meeting is an open public forum. Some RAC members may attend the meeting by conference call, telephone, or electronically.

FOR FURTHER INFORMATION CONTACT: Frank V. Guzman, Forest Supervisor and Designated Federal Officer, at 208–756–5111.

Dated: September 10, 2010.

Frank V. Guzman,

Forest Supervisor, Salmon-Challis National Forest, Public Lands Center, 1206 South Challis Street, Salmon, Idaho.

[FR Doc. 2010–23899 Filed 9–23–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARMENT OF AGRICULTURE

Forest Service

Revision of the Shoshone National Forest Land and Resource Management Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to revise the Shoshone National Forest Land and Resource Management Plan and prepare an environmental impact statement.

SUMMARY: As directed by the National Forest Management Act (NFMA), the USDA Forest Service is preparing the Shoshone National Forest's revised land management plan (forest plan) and an environmental impact statement (EIS) for this revised forest plan. This notice briefly describes the nature of the decision to be made, the need for change and proposed action, and information concerning public participation. It also provides estimated dates for filing the EIS and the name and address of the responsible agency official and the individual who can provide additional information.

Finally, this notice briefly describes the applicable planning rule and how plan revision work completed under the 2008 planning rule will be used or modified for completing this plan revision.

The revised land management plan will supersede the 1986 forest plan, as amended. The amended plan will remain in effect until the revision takes effect.

DATES: Comments concerning the need for change and the proposed action provided in this notice will be most useful in the development of the draft revised plan and draft EIS if received by November 19, 2010. The agency expects to release a draft revised forest plan and draft EIS for formal comment by May 2012 and a final revised plan and final environmental impact statement by April 2013.

Public meetings to gather additional input on potential alternatives to the proposed action are scheduled for winter/spring 2011. The dates, times, and locations of these meetings will be announced and sent to members of the plan revision mailing list and posted on the Shoshone National Forest Web site at *http://www.fs.usda.gov/shoshone.*

ADDRESSES: Send written comments to Forest Plan Revision, Shoshone National Forest, 808 Meadow Lane Avenue, Cody, WY 82414. Comments may also be sent via e-mail to *shoshone_forestplan@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Olga Troxel, acting planning team leader, 808 Meadow Lane Avenue, Cody, WY 82414, telephone 307.578.5164. Information on this revision is also available on the Shoshone National Forest Web site at *http://www.fs.usda.gov/shoshone.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Name and Address of the Responsible Official

The responsible official who will approve the Record of Decision is Rick Cables, Regional Forester, USDA Forest Service, Rocky Mountain Region, 740 Simms Street, Denver, CO 80401.

Cooperating Agencies

Cooperating Agencies include the State of Wyoming, Fremont County, Hot Springs County, Park County, Cody Conservation District, Dubois-Crowheart Conservation District, Hot Springs Conservation District, Lower Wind River Natural Resource District. Meeteetse Conservation District, Popo Agie Conservation District, and Teton Conservation District. Cooperating Agencies funded the social and economic assessments. They also work with Forest Service officials to address state and local government interests in the planning process and the development of plan direction.

Nature of the Decision To Be Made

The Forest Service is preparing an EIS to revise the 1986 forest plan. The EIS process is meant to inform the regional forester when deciding which alternative best meets the need to achieve quality land management under the sustainable multiple-use management concept to meet the diverse needs of people while protecting the Shoshone National Forest's resources, as required by the NFMA and the Multiple Use Sustained Yield Act.

The revised forest plan describes the strategic intent of managing the Shoshone National Forest for 10 to 15 years. The revised forest plan provides management direction in the form of goals (desired conditions), objectives, suitability determinations, standards, guidelines, and a monitoring plan. It also makes special area recommendations for wilderness, research natural areas, and other special areas.

It is also important to identify the types of decisions that will not be made within the revised forest plan. Authorization of project-level activities on the Shoshone National Forest is not a decision made in the forest plan, but occurs through subsequent project specific decision making. The designation of routes and trails for specific uses is not considered during plan revision, but will be addressed through subsequent planning processes.

Some issues, although important, are beyond the authority or control of the Shoshone National Forest or the Forest Service and will not be considered. Additionally, some decisions and determinations, such as management direction, Canada lynx conservation, and the Clarks Fork of the Yellowstone Wild River corridor, have been accomplished through separate forest plan amendment processes that occurred recently and will not be reconsidered in revision.

Applicable Planning Rule

Preparation of a revised plan is governed by the requirements of the NFMA and the associated regulations (or rule) at 36 CFR 219. The Shoshone plan revision was underway when the 2008 rule was enjoined on June 30, 2009, by the United States District Court for the Northern District of California (*Citizens for Better Forestry* v. *United States Department of Agriculture,* 632F. Supp. 2d 968 (N.D. Cal. June 2009)).

On December 18, 2009, the Department reinstated the previous planning rule, commonly known as the 2000 planning rule, in the **Federal Register** (74 FR 242, pages 67059 through 67075 [Friday, December 18, 2009]). The transition provisions of the reinstated rule allow the Forest Service to follow the procedures of a previous 1982 rule. The Shoshone National Forest has elected to use the provisions of the 1982 rule, including the requirement to prepare an ETS to complete the revised plan.

Prior Plan Revision Efforts

In spring 2005, the Shoshone National Forest began working on revision of the forest plan. Eleven public and cooperator meetings were held in May and June 2005 to begin collaboration on the revision and the need for change questions. In September 2005, a notice of intent was published in the **Federal Register**, announcing the beginning of the revision process under the 2005 planning rule. In September 2005, the forest supervisor published the Need for Change document that summarized the comments received on need for change. Twelve public and cooperator meetings were held in September and October 2005 to discuss the need for change and the development of revision topics. The forest supervisor identified the revision topics to be addressed in plan revision in a document published in December 2005.

From January 2006 through February 2007, work began on developing plan direction and an associated draft forest plan. Numerous documents were produced for public review and consideration. Fifty-three public and cooperator meetings were held to discuss the development of plan direction.

In March 2007, further work developing a draft plan was halted with the injunction of the 2005 planning rule. In May 2008, the Forest Supervisor published a notice of adjustment to continue with plan revision under the 2008 planning rule. Information produced under the 2005 planning rule was used to produce a draft plan under the 2008 planning rule.

In May 2008 and April 2009, 10 public and cooperator meetings were held to continue work on developing and refining plan direction. Work on plan revision halted with the court injunction of the 2008 planning rule in June 2009.

Although the 2008 planning rule is no longer in effect, information gathered prior to the court's injunction is useful for completing the revision of the plan using the provisions of the 1982 rule. The documents listed here include the majority of material developed for plan revision as of April 2009. This material is posted on the Shoshone National Forest Web site at *http://www.fs.usda.gov/shoshone.* The following describes the material that is appropriate for continued use in the revision process:

1. *Comprehensive Evaluation Report (CER) (April 2009)*—Much of the background material in this report will be carried forward in the Analysis of the Management Situation or draft EIS. The CER documents the evaluation of the 1986 forest plan and proposed change and evaluates current social, economic, and ecological conditions and trends that contribute to sustainability. The CER identifies factors that affect conditions and trends, and includes information about what is causing conditions to change. Much of this information will continue to be used in the revision process.

2. *An Economic Profile of the Shoshone National Forest (draft dated May 2008)*—This report is not rule specific and is appropriate for use in revision. The economic information in the report will be updated with the latest information.

3. *Evaluation of Areas for Potential Wilderness (August 2008)*—This information is consistent with appropriate provisions of the 1.982 rule and will be brought forward into the revision.

4. *Potential Research Natural Areas (August 2008) and Potential Special Interest Areas (August 2008)*—This information is not rule specific and will be carried forward into the revision.

5. *Wild and Scenic River Eligibility Evaluation (August 2008)*—The eligibility determination is consistent with the provisions of the 1982 rule and will be brought forward into the revision.

6. *Report: Study of Preferences and Values on the Shoshone National Forest (January 2008) and Social Survey Comments (January 2008)*—This information is not rule specific and will be carried forward into the revision.

Additional background reports, assessments, datasets, and public comment will be used; much of this material can be found on the Shoshone's Web site. As necessary or appropriate, the material listed above will be adjusted further as part of the planning process using the provisions of the 1982 rule.

Need for Change and Proposed Action

According to the National Forest Management Act, forest plans are to be revised on a 10- to 15-year cycle. The purpose and need for revising the current forest plan are (1) the forest plan is over 20 years old, and (2) since the forest plan was approved in 1986, there have been changes in economic, social, and ecological conditions, new policies and priorities, and new information based on monitoring and scientific research. Extensive public and employee collaboration, along with science-based evaluations, identified the need for change in the 1986 forest plan. This need for change has been organized into six revision topics that are listed below. Input on need for change is documented in Need for Change (September 2005).

Proposed Action

The proposed action will be developed using the information that has been developed and summarized over the last five years: Public comments, public working groups, proposed plans, and other documents. Much of this information can be found on the Shoshone's Web site and includes Draft Proposed Land Management Plan (April 2009), maps of draft recreation settings (April 2009), range of settings maps (May 2008), suggested settings from the public (May 2008), settings maps (January 2007), Need for Change Evaluation (September 2005), and Revision Topics (December 2005). The information in these documents and maps are the result of internal and external discussions with agency employees, the public, and cooperators, including over 88 meetings. The Shoshone planning team proposes to review the work that has been completed to date to develop a proposed action and range of alternatives.

Revision Topics

The Forest Service proposes to carry forward the revision topics as documented in Revision Topics (December 2005). These revision topics represent questions that need to be addressed during plan revision. The selection of the topics was based upon both the need for change from the existing Forest Plan and the strong public interest in how the revised plan will answer these questions. These topics were the ones identified repeatedly in the public meetings held across the forest and by the Government Cooperators Work Group.

1. *Recreation uses and opportunities*—What type of recreation opportunities will be provided on the forest, where can they occur, and when can they occur?

2. *Special areas and designations*—How will the Dunoir Special Management Unit and High Lakes Wilderness Study Area be managed? Will new designated wilderness areas be recommended? Will any new research natural areas or special interest areas be designated?

3. *Vegetation management*—What areas will be suitable for timber harvest? How will hazardous fuels be managed? How will forest health and the impacts from the beetle epidemic be addressed? What mix of vegetation types and conditions will be maintained on the Shoshone?

4. *Wildlife habitat management*—What will the management direction be for wildlife species, including big game species? How will wildlife corridors and secure habitat areas be managed? What management direction applies to the management of streams and lakes for native fish and aquatic life?

5. *Minerals*—What areas of the Shoshone are suitable for mineral, oil, and gas development?

6. *Commercial livestock grazing*—What areas of the Shoshone are suitable for livestock grazing?

Public Involvement

Extensive public involvement and collaboration on revising the 1986 Shoshone National Forest Land and Resource Management Plan have occurred over the last five years. Discussions with the public regarding needed changes to the 1986 forest plan began with a series of public meetings in 2005. This input, along with science-based evaluations, were used to determine a need for change and a proposed plan. Correspondence, news releases, comment periods, and other tools were used to gather feedback from the public, Shoshone National Forest employees, tribal governments, federal and state agencies, and local governments.

We desire to continue collaborative efforts with members of the public who are interested in management of the Shoshone, as well as federal and state agencies, local governments, and private organizations. If you feel we missed any substantive issues or concerns from those listed above as revision topics or as identified in the Need for Change document, or additional, different comments from those previously provided on the draft proposed plan, please contact us.

If you do wish to comment, it is important that you provide comments at such times and in such a way (clearly articulate your concerns) that they are useful to the Agency's preparation of the revised plan and the EIS. Therefore, comments on the proposed action and need for change will be most valuable if received by November 19, 2010. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative or judicial review. At this time, we anticipate using the 2000 planning rule pre-decisional objection process (36 CFR 219.32) for administrative review.

Comments received in response to this solicitation, including the names and addresses of those who comment, will be part of the public record. Comments submitted anonymously will be accepted and considered.

Authority: 16 U.S.C. 1600–1614; 36 CFR 219.35 [74 FR 67073–67074].

Dated: September 16, 2010.

David M. Pieper,

Acting Forest Supervisor, Shoshone National Forest.

[FR Doc. 2010–23752 Filed 9–23–10; 8:45 am]

BILLING CODE 3410–11–M

UNITED STATES ARCTIC RESEARCH COMMISSION

Meeting

Notice is hereby given that the U.S. Arctic Research Commission will hold its 94th meeting in Fairbanks, AK, on October 6–8, 2010. The business session, open to the public, will convene October 6 at 9 a.m.

The Agenda items include:

(1) Call to order and approval of the agenda.

(2) Approval of the minutes from the 93rd meeting.

(3) Commissioners and staff reports.

(4) Discussion and presentations concerning Arctic research activities.

The focus of the meeting will be reports and updates on programs and research projects affecting the Arctic.

If you plan to attend this meeting, please notify us via the contact information below. Any person planning to attend who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission of thoe needs in advance of the meeting.

Contact person for further information: John Farrell, Executive Director, U.S. Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

John Farrell,

Executive Director.

[FR Doc. 2010–23780 Filed 9–23–10; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ18

Endangered Species; Permit No. 1578–01; and Permit No. 1595–04

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of modification requests.

SUMMARY: Notice is hereby given the following applicants have applied in due form for modifications to permits (Permit Nos. 1578 and 1595–03) to take shortnose sturgeon for purposes of scientific research:Maine Department of Marine Resources (MDMR) (Gail S. Wippelhauser, Principal Investigator), 21 State House Station, Augusta, ME, 04333 (Permit No. 1578); and Michael M. Hastings, University of Maine, 5717 Corbett Hall, Orono, ME 04469, (Permit No. 1595–03).

DATES: Written, telefaxed, or e-mail comments must be received on or before October 25, 2010.

ADDRESSES: The applications and related documents are available for review by selecting "Records Open for Public Comment" from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov/*, and then selecting Permit Nos. 1578–01 or 1595–04 from the list of available applications. The documents are available for review upon written request or by appointment in the following offices:

- Permits, Conservation and Education Division, Office of Protected Resources, NMFS,

1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

- Northeast Region, NMFS, Protected Resources Division, 55 Great Republic Drive, Gloucester, MA 01930; phone (978)281–9328; fax (978)281–9394.

Written comments or requests for a public hearing on these applications should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifiers: Permit No. 1578–01 or Permit No.1595–04.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Colette Cairns, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit amendments are requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Application to Modify Permit No. 1578

The existing permit authorizes sampling 500 shortnose sturgeon adults and sub-adults annually in the main stem of the Kennebec River between Augusta, ME and Lockwood Dam. Efforts have focused on the location of spawning and foraging habitat, migratory pathways, and effects of river flow on migration and habitat use. The applicant now proposes to document the use of other river systems by sturgeon in the Gulf of Maine (GOM) proposing an increase in numbers of shortnose sturgeon captured from 500 to 600, while also expanding the action area to include: (1) the Kennebec River mouth to Lockwood Dam; (2) the Androscoggin River mouth to Brunswick Dam; (3) the Sheepscot River mouth to Reversing Falls; (4) the Sasanoa River, the Back River, and Sagadahoc Bay; (5) Tottman Cove; and (6) the lower Saco River. New research methods proposed include: use of Floy tags for external identification; endoscopic examination with borescopes to verify sex; blood sampling; gastric lavage for diet analysis; scute sampling for elemental analysis; and electro-narcosis for anesthetization.

Application to Modify Permit No. 1595–03

The objectives of the original research would remain the same for the proposed modification, assessing the distribution, movements, abundance and spawning of shortnose sturgeon in the Penobscot River system. However, the Permit Holder requests an increased number of shortnose sturgeon captured with gill and trammel nets from 200 to 300. Other research activities requested include: (1) lowering the minimum water temperature to 0°C to target sturgeon; (2) using Floy tags; (3) using electro-narcosis for anesthetization; (4) using scute sampling for elemental analysis; (5) using gastric lavage for diet analysis; and (6) using fall (September December) to sample early life stages.

Dated: Septemeber 21, 2010.

Jolie Harrison,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–24036 Filed 9–23–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–423–809]

Stainless Steel Plate in Coils from Belgium: Extension of Time Limits for Preliminary and Final Results of Full Five-year ("Sunset") Review of Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 24, 2010.

FOR FURTHER INFORMATION CONTACT: Alexander Montoro, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–0238.

SUPPLEMENTARY INFORMATION:

Background

On June 2, 2010, the Department of Commerce ("Department") initiated the second sunset review of the countervailing duty order on stainless steel plate in coils from Belgium in accordance with section 751(c) of the Tariff Act of 1930, as amended ("Act"). *See Initiation of Five-year ("Sunset") Review*, 75 FR 30777 (June 2, 2010). Within the deadline specified in 19 CFR 351.218(d)(1)(i), the Department received notices of intent to participate on behalf of Allegheny Ludlum Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, who were the petitioners in the original investigation. Those parties claimed interested party status under section 771(9)(C) and (D) of the Act, as manufacturers of a domestic like product and as a certified union representing workers in the domestic industry producing certain stainless steel plate in coils. The Department received substantive responses from the petitioners within the deadline specified in 19 CFR 351.218(d)(3)(i). The Department also received substantive responses in a timely manner from the following respondent interested parties: the Government of Belgium and ArcelorMittal Stainless Belgium N.V. Domestic and respondent interested parties also submitted timely rebuttal comments.

On July 22, 2010, after analyzing the submission and rebuttals from interested parties and finding the substantive responses adequate, the Department determined to conduct a full sunset review. *See* Memorandum from Yasmin Nair, International Trade Compliance Analyst, to Susan H. Kuhbach, Director, AD/CVD Operations, Office 1, entitled "Adequacy Determination in Countervailing Duty Sunset Review of Certain Stainless Steel Plate in Coils from Belgium," dated July 22, 2010.

Extension of Time Limits for Preliminary and Final Results of Reviews

The Act provides for the completion of a full sunset review within 240 days of the publication of the initiation notice. See section 751(c)(5)(A) of the Act. In accordance with section 751(c)(5)(B) of the Act, the Department may extend the period of time for making its determination by not more than 90 days, if it determines that the review is extraordinarily complicated.

We determine that this review is extraordinarily complicated, pursuant to sections 751(c)(5)(C)(i) and (ii) of the Act, because there are a large number of programs under consideration for which the Department must analyze numerous complex issues. Therefore, the Department requires additional time to complete its analysis. Accordingly, the Department is extending the deadline in this proceeding by 90 days in accordance with section 751(c)(5)(B) of the Act . As a result, the Department intends to issue the final results of this full sunset review by April 28, 2011.

With respect to the preliminary results of this full sunset review, the Department's regulations, at 19 CFR 351.218(f)(3), provide that the Department normally will issue its preliminary results in a full sunset review not later than 110 days after the initiation. However, because of the reasons cited above, we require additional time to conduct the analysis required for the preliminary results. Therefore, we are extending the deadline for the preliminary results of this full sunset review by 90 days and intend to issue those preliminary results by December 19, 2010. However, December 19, 2010, falls on a Sunday, and it is the Department's long–standing practice to issue a determination the next business day when the statutory deadline falls on a weekend, federal holiday, or any other day when the

Department is closed. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005). Accordingly, the deadline for completion of the preliminary results of this full sunset review is now no later than December 20, 2010.

This notice is issued in accordance with sections 751(c)(5)(B) and (C) of the Act.

Dated: September 20, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–24019 Filed 9–23–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR61

Marine Mammals; File No. 14535

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that Colleen Reichmuth, Ph.D., University of California at Santa Cruz, Long Marine Laboratory, 100 Shaffer Road, Santa Cruz, CA, has been issued a permit amendment (Permit No. 14535–01).

DATES: Written, telefaxed, or e-mail comments must be received on or before October 25, 2010.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jennifer Skidmore, (301)713–2289.

SUPPLEMENTARY INFORMATION: On June 29, 2010, notice was published in the **Federal Register** (75 FR 37388) that a request for a permit amendment to conduct research on captive pinnipeds for scientific research had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 14535–01 authorizes the addition of two non-releasable animals of each of the following species to the captive research program: ringed seal (Phoca hispida), bearded seal (*Erignathus barbatus*), and spotted seal (*Phoca largha*). The purpose is to expand the comparative understanding of basic perceptual and cognitive function among pinnipeds and to assess potential impacts of human noise on marine mammals. The amendment is for the duration of the permit, which expires on December 31, 2014.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: September 17, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–24040 Filed 9–23–10; 8:45 am]

BILLING CODE S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ24

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Issuance of an Exempted Fishing Permit (EFP)

AGENCY: Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS).

ACTION: Notification of issuance of a revised EFP to conduct exempted fishing.

SUMMARY: The Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS, has issued a revised EFP in support of a drop chain small mesh net study conducted by the University of Rhode Island (URI). The study aims to reduce summer flounder discard mortality in the *Loligo* small-mesh fishery. The revised EFP includes an exemption for participating vessels from the Trimester III *Loligo* mesh size restrictions. This exemption is consistent with the goals and objectives of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and the Atlantic Mackerel, Squid, and Butterfish FMP.

FOR FURTHER INFORMATION CONTACT: Sarah Heil, Fishery Management Specialist, (978) 281–9257.

SUPPLEMENTARY INFORMATION: On October 26, 2009, an EFP was issued to URI in support of a study that would test the effectiveness of a drop chain small mesh net in its ability to reduce catches of summer flounder in the small mesh fishery. The original EFP included exemptions from the summer flounder size restrictions specified at 50 CFR 648.103, scup size restrictions at § 648.124, scup possession limits at § 648.125, and squid and butterfish possession restrictions at § 648.25. The exemption from summer flounder size restrictions was granted to allow vessels to retain and land summer flounder for a delayed mortality monitoring period. The remaining exemptions were granted to allow incidental catch species to be temporarily retained for data collection purposes. Field work for this project began in April 2010, and 8 of the project's proposed 12 fishing trips have been completed. Research trips are conducted aboard two commercial fishing vessels, as normal fishing operations, using standard *Loligo* squid nets. Research trips conducted since April 2010 have used experimental and control nets with a codend mesh size of 1 7/8 in. (48 mm), consistent with the *Loligo* mesh size restrictions in place at the time.

Amendment 10 to the Atlantic Mackerel, Squid, and Butterfish FMP implemented an increase to the minimum mesh size for *Loligo* squid, from 1 7/8 in. (48 mm) to 2 1/8 in. (54 mm), during Trimester I (January to April) and Trimester III (September to December), effective September 13, 2010. This increase to the *Loligo* minimum mesh size was unanticipated at the time the original EFP application was submitted, and therefore, principal investigators did not request an exemption from *Loligo* mesh size restrictions. In addition, because the 2 1/8–in. (54–mm) minimum mesh size was not in place at the onset of field operations, research trips were completed using nets consistent with *Loligo* gear restrictions at that time.

On September 8, 2010, NMFS received a request from Kathy Castro of URI for an exemption from the new minimum mesh size for the *Loligo* fishery. This exemption was requested to allow completion of the project's remaining four research trips using the previous minimum mesh size of 1 7/8 in. (48 mm). A change to the nets used to conduct field sampling at this stage of the project would undermine data analysis in support of the project's objectives. Therefore, NMFS is reissuing the EFP in support of the drop chain study to facilitate the completion of the research project.

The revised EFP includes an exemption from the *Loligo* Trimester III minimum mesh size of 2 1/8 in. (54 mm) at § 648.23(3). An exemption from the *Loligo* mesh size restriction will allow the completion of the project's remaining research trips, using the previous minimum mesh size of 1 7/8 in. (48 mm). The exemption is within the scope and scale of the original approved EFP, and the overall impacts of research operations are unchanged from the initial review.

The applicants may request minor modifications and extensions to the EFP throughout the course of research. EFP modifications and extensions may be granted without further public notice if they are deemed essential to facilitate completion of the proposed research and result in only a minimal change in the scope or impacts of the initially approved EFP request.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 21, 2010.

Carrie Selberg,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–24022 Filed 9–23–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Bureau of the Census

2010 Census Advisory Committee

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (Census Bureau) is giving notice of a meeting of the 2010 Census Advisory Committee. The Committee will address policy, research, and technical issues related to 2010 Decennial Census Programs and the American Community Survey. Last-minute changes to the agenda are possible, which could prevent giving advance notification of schedule changes.

DATES: October 21–22, 2010. On October 21, the meeting will begin at approximately 8:30 a.m. and end at approximately 5 p.m. On October 22, the meeting will begin at approximately 8:30 a.m. and end at approximately 12:30 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau Auditorium and Conference Center, 4600 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Suitland, MD 20746, telephone 301–763–6590. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The 2010 Census Advisory Committee is composed of a Chair, Vice-Chair, and 20-member organizations—all appointed by the Secretary of Commerce. The Committee considers the goals of the Decennial Census, including the American Community Survey and related programs, and users' needs for information provided by the Decennial Census from the perspective of outside data users and other organizations having a substantial interest and expertise in the conduct and outcome of the Decennial Census. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section10(a)(b)).

The meeting is open to the public, and a brief period is set aside for public comments and questions. However, individuals with extensive statements for the record must submit them in writing to the Census Bureau Committee Liaison Officer named above at least three working days prior to the meeting. Seating is available to the public on a first-come, first-served basis.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer as soon as known, and preferably two weeks prior to the meeting.

Due to increased security and for access to the meeting, please call 301–763–9906 upon arrival at the Census Bureau on the day of the meeting. A photo ID must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Dated: September 20, 2010.

Robert M. Groves,

Director, Bureau of the Census.

[FR Doc. 2010–23925 Filed 9–23–10; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Business Development Mission to Egypt and Morocco

Mission Description

The U.S. Department of Commerce, International Trade Administration, and U.S. Commercial Service is organizing a Business Development Mission to explore ports and infrastructure development opportunities in Egypt (Cairo and Alexandria) and Morocco (Casablanca and Tangier), March 25—April 1, 2011. This mission, led by a Senior Official of the Department of Commerce or other U.S. agency, will focus on the opportunities in port logistics, infrastructure projects, safety and security, and energy infrastructure. The mission will include one-on-one business appointments with pre-screened potential buyers, agents, distributors and joint venture partners; site visits to ports and free trade zones, meetings with government officials, and networking receptions for companies interested in expansion into the North African, Middle Eastern and Southern European markets.

Commercial Setting

Egypt

Egypt is strategically located at the gateway of trade and commerce for Southern Europe as well as North Africa and the Middle East. It is a prime location for the transit of goods, as well as a key destination for American companies seeking to do business in Egypt and the region. With a population of over 80 million Egypt is the largest Arab country, and the fourth largest export market for U.S. products and services in the Middle East. The U.S. is Egypt's largest bilateral trading partner, and the second largest investor. In 2010, bilateral trade is expected to exceed $7 billion. The Egyptian gross domestic product (GDP) grew over five percent from 2009 to 2010. The financial sector escaped many negative impacts of the global financial crisis, due to Egypt's improved banking supervision, conservative lending practices and central bank guarantee of all bank deposits.

In 2010 the Egyptian Ministry of Investment announced major plans for infrastructure development with 46 different projects valued at over $16 billion. The majority of these projects are available to be awarded based on the Egyptian Government's "Public Private Partnership" (PPP) measures. The PPP is a multi-faceted initiative to attract private sector investment for infrastructure projects and U.S. companies are eligible to bid on them. Trade Mission participants will be briefed by Egyptian Government officials on these projects and the PPP program. In addition, meetings will be arranged with companies that have already been awarded the designated infrastructure projects in order to identify supplier contacts.

Morocco

Morocco is the only African country to have a Free Trade Agreement (FTA) with the U.S. Since the FTA went into effect in 2006, U.S. exports to Morocco have tripled to $1.6 billion. Morocco has aggressively developed the infrastructure to become a gateway to North Africa and the European Union. The Port of Tanger-Med, soon to be Africa's largest port, is located only eight miles from Europe, at the northern tip of Africa where the Mediterranean Sea meets the Atlantic Ocean. Tanger-Med already offers direct shipping from Houston, Mobile, Jacksonville, Miami, Savannah, Charleston, and Norfolk. This strategically located port offers free trade zones, including the Auto Zone dedicated to auto parts, and direct distribution systems onward to the European Union, the Middle East, and North Africa.

The Trade Mission coincides with the Tanger Mediterranean Special Agency's (TMSA) fourth annual MedLog Conference (Conference), March 31—April 1, 2011. TMSA is responsible for all Tanger-Med building projects, port operations, and management of the free trade zones. Mission participants will meet buyers of safety and security, and vessel management equipment, and conduct one-on-one business appointments with officials who purchase products and services for the port facilities. In addition, meetings will be arranged with companies that have already been awarded the designated infrastructure projects in order to identify supplier contacts.

Best Sector Prospects

Port Logistics

Egypt

The mission will include briefings in Cairo by representatives of the major firms involved in port activities in Egypt, and a visit to the port of Alexandria. Egypt has 3,500 kilometers of navigable waterways and the Government considers the maintenance and expansion of its ports a top priority. The port of Alexandria, the largest of the country's nine ports, was recently revamped, resulting in an increased cargo handling capacity of 44 million tons per year, which represents about 60 percent of Egypt's trade. Port projects will include a new container terminal and container-handling piers, new storage facilities and handling equipment and improvements to wharfs and marinas.

To address overall port efficiency, there is a growing demand for improved Management Information Systems and Terminal Operating Systems. These include systems for financial management, port engineering, cargo tracking, cargo and container tracking and transfer, gate control, and procurement. U.S. companies can also participate as providers for shipping agents, warehousing, stevedoring, container handling, port management and consulting. Additionally, there is a need for heavy equipment to handle bulk cargo for loading large shipments of minerals and other commodities.

Morocco

Construction of Tanger-Med II, an additional set of cargo terminals and storage, is currently underway and the port will begin issuing tenders for equipment and services in the next 12–18 months. As part of a national logistics program, the Moroccan government recently announced a 20-year, $13 billion project to build port, rail, highway, and airport logistics centers, with port management, vessel tracking and management, cold storage, warehousing, railways, bridges, and distribution centers. Government tenders are now being issued for these projects, and the plans are to spend $7 billion on the project by 2015.

Examples of planned port projects include:

• A $69 million project to convert the old port, located near the City of Tangier, into a tourist center and passenger terminal.

• Nador West Med, a new industrial port for the coastal city of Nador.

Infrastructure Projects

Egypt

The Government of Egypt directed $2.6 billion to Egypt's infrastructure in 2008, $1.4 billion in 2009, and $1.9 billion in 2010. With a growing number of tourists, there has been increased pressure on Egypt's roads, bridges, railroads, power stations, water and sewage, hospitals, and schools. As a result, construction is one of the most active sectors of the Egyptian economy, contributing about six percent of GDP and accounting for eight percent of employment in 2009.

Examples of planned infrastructure projects include:

• The Rod El Farag-6th of October Highway, at $545 million.

• The Cairo-10th of Ramadan City Railway Line, at $727 million.

• A special economic zone in the Gulf of Suez, at $1.45 billion.

• A water treatment station in the Red Sea, at $400 million.

Morocco

Morocco has multi-billion-dollar construction projects in many sectors. Opportunities exist in port construction and logistics facilities, hotels and resorts, road construction and equipment, airports, hospitals and clinics, municipal buildings, renewable power plants (particularly solar and wind), waste management plants, schools and universities, water management plants, and architecture.

Examples of upcoming infrastructure projects include design and construction of:

• A high-speed rail line from Tangier to Casablanca, with $4.5 billion to be spent by 2015.

• An $830 million light rail line around Casablanca.

• 60 dams at $1.47 billion.

• Water desalination plants at $1.22 billion.

• Highway systems in Rabat, Tit Mellil-Berrechid and El Jadida-Safi at $1.7 billion.

• Low-cost housing of 130,000 units at $1.9 billion.

• New passenger and cargo rail stations for Marrakesh and Casablanca.

Safety/Security

Egypt

In addition to Alexandria, Egypt has eight major ports and three cross-country borders that require significant security measures. In its fight against drug smuggling and counterfeit products, Egypt requires container scanning and shipment tracking devices. Egypt is also looking at container scanning upgrades and seafarer identification cards for more secure identification and synchronizing systems to coordinate security measures and responses. Accordingly, opportunities exist for U.S firms providing short-range radar systems, surveillance cameras, infrared and radiological detectors, and vessel tracking maritime information systems, biometric scanners, personnel databases, computer peripherals, and systems integration equipment.

Morocco

Tangier is the closest land access point between Africa and Europe, creating a need for cargo and passenger control/tracking systems, surveillance equipment including sonar and radar, biometric passport technologies, and other equipment used in the fight against drug trafficking, smuggling and counter terrorism. The military and police agencies are purchasing safety and security equipment for protecting Morocco's two vast coastlines and remote national borders.

Energy Infrastructure

Egypt

Egypt is one of the largest electrical energy producing countries in the Middle East. Over the next ten years, Egypt plans to expand its electricity capacity to 40,000 megawatts through a combination of traditional, renewable, and nuclear energy production to diversify energy resources and preserve the country's limited oil and gas reserves. Opportunities exist for U.S. providers of wind turbines, blades, and other equipment, as well as development and project management. Best prospects in the energy sector include circuit breakers of more than 66kv, nuclear-related consultation and generation equipment and peripherals; power transformers of more than 25MVA–66kva; power transmission lines; turbine generator units with associated equipment; and vibration dampers.

Morocco

As industry grows in Morocco, there is an increasing need for coal and gas-fired energy plants.

A $2.7 billion coal-fired power plant (1320 megawatts) is planned for the coastal city of Safi and $450 million will be used specifically for clean coal technology. Opportunities also exist for equipment and services in solar and wind energy. Five new wind farms will be built by 2020 to supply 2000 megawatts of electricity. In late 2009, Morocco announced a $9 billion solar energy program and established a Solar Energy Agency. Engineering, construction, procurement and, and management opportunities also exist.

Mission Goals

The goal of the trade mission is to provide U.S. participants with first-hand market information, access to government decision makers as appropriate and one-on-one meetings with business contacts, including potential agents, distributors and partners, so they can position themselves to enter or expand their presence in the Egyptian and Moroccan markets.

Mission Scenario

The Trade Mission will include four stops: Cairo and Alexandria, Egypt, March 25–28, and Casablanca and Tangier, Morocco, March 29–April 1.

Cairo is the capital of Egypt and the largest city in Africa. A majority of the nation's commerce is generated in Cairo and regional headquarters of numerous businesses and organizations are located in the city.

Alexandria is the second largest city and the largest port in Egypt as well as an important industrial center. The majority of Egypt's trade goes through the port, with a cargo handling capacity of 44 million tons per year.

Casablanca is Morocco's largest city, the commercial center of Morocco and the headquarters and industrial facilities location for the leading Moroccan and international companies based in Morocco.

Tangier is home to the Tanger-Med Port. In addition, Tangier is undergoing rapid development and modernization. Plans for the city include five-star hotels along the bay, a modern business district, an airport terminal and a soccer stadium.

In each city, participants will meet with new business contacts, learn about the markets by participating in Embassy briefings, and explore additional opportunities at networking receptions. Activities will include one-on-one business appointments with pre-screened business prospects.

Proposed Timetable

Friday	March 25	Arrival in Cairo.
Saturday	March 26	Visit to Alexandria to meet with port officials and return to Cairo.
Sunday	March 27	Orientation and market briefings in Cairo.
Monday	March 28	One-on-one business appointments in Cairo.
Tuesday	March 29	One-on-one business appointments; evening departure for Casablanca, Morocco.
Wednesday	March 30	Orientation and market briefings, one-on-one business appointments, Evening transfer to Tangier.
Thursday	March 31	Attend the MedLog Conference, meetings with port and Moroccan Government officials and Ambassador's reception.
Friday	April 1	One-on-one business appointments.
Saturday	April 2	Depart Morocco for U.S.

End of Mission

Participation Requirements

All parties interested in participating in the Trade Mission to Egypt and Morocco must complete and submit an application package for consideration by the U.S. Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. This mission is designed for a minimum of 12 and a maximum of 25 companies to participate in the mission from the applicant pool. U.S. companies already doing business in the target markets as well as U.S. companies seeking to enter these markets for the first time are encouraged to apply.

Fees and Expenses

After a company has been selected to participate on the mission, a payment to the U.S. Department of Commerce in the form of a participation fee is required. The participation fee will be $2,950 for a small or medium-sized enterprise (SME) * and $3,850 for large firms. The fee for each additional firm representative (SME or large firm) is $700. Expenses for travel, lodging, most meals, interpreters, and incidentals will be the responsibility of each mission participant. Delegation members will be able to take advantage of Embassy rates for hotel rooms.

Conditions for Participation

• An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's

* An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (*see http://www.sba.gov/services/contracting opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (for additional information *see http://www.export.gov/newsletter/march2008/initiatives.html*).

products and/or services, primary market objectives, and goals for participation. If the U.S. Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.

- Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content.

Selection Criteria for Participation

Selection will be based on the following criteria:

- Suitability of the company's products or services to the targeted markets.
- Applicant's potential for business in the target markets, including likelihood of exports resulting from the mission.
- Consistency of the applicant's goals and objectives with the stated scope of the mission.

Diversity of company size, sector or subsector, and location may also be considered during the review process.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including posting on the U.S. Department of Commerce trade missions calendar—*http://www.ita.doc.gov/doctm/tmcal.html*—and other Internet Web sites, publication in domestic trade publications and association newsletters, direct outreach to the Department's clients and distribution lists, posting in the **Federal Register,** and announcements at industry meetings, symposia, conferences, and trade shows.

Recruitment for the mission will begin September 20, 2010 and conclude no later than January 21, 2011. Applications received after January 21, 2011 will be considered only if space and scheduling constraints permit. We will inform applicants of selection decisions as soon as possible after January 21, 2011. Applications received after that date will be considered only if space and scheduling constraints permit.

Contacts

U.S. Commercial Service Domestic Contacts

Trade Promotion Programs

Anne Novak, *Tel:* 202–482–8178, *Fax:* 202–482–9000, *E-mail: EgyptMoroccoTM@trade.gov.*

Africa, Near East and South Asia

Sal Tauhidi, *Tel:* 202–482–1322, *Fax:* 202–482–5179, *E-mail: EgyptMoroccoTM@trade.gov.*

Dated: September 21, 2010.

Anne Novak,

Global Trade Programs, Commercial Service.

[FR Doc. 2010–23967 Filed 9–23–10; 8:45 am]

BILLING CODE 3510–FP–P

INTERNATIONAL TRADE ADMINISTRATION

Mission Statement for Executive-Led Trade Mission to Jordan and Israel

I. Mission Description

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service is organizing a Trade Mission to Amman, Jordan, and Jerusalem and Tel-Aviv, Israel. A stop in Eilat, Israel, for companies involved in the renewable energies sector, is also scheduled. The mission will take place February 20–24, 2011. The delegation will be comprised of U.S. firms from a cross section of industries with market potential including, but not limited to, products, services, and technologies in the following sectors: healthcare technologies, and cleantech, (*i.e.* technologies that support increased productivity or profitability while also reducing resource consumption or pollution, otherwise referred to as clean technologies).

The goal of the mission is to help U.S. companies launch or increase their export business in the markets of Jordan, Israel, and the West Bank. Participating firms will gain market information, make business and government contacts, solidify exporting strategies, and advance specific projects, towards the outcome of increasing U.S. exports. The mission, to be led by an executive level U.S. Department of Commerce official, will include business-to-business matchmaking appointments with local companies, networking events, and meetings and briefings with government and industry officials. The mission delegation will be comprised of U.S. firms that design, manufacture, supply, and/or integrate products, services, and technologies in the targeted sectors and in other appropriate industries.

II. Commercial Setting

Jordan

Jordan, with a 2009 GDP of $33 billion, and a per capita GDP of $5,300 continues to transform itself into an internationally competitive market-based economy. Education and literacy rates, and measures of social well-being are relatively high compared to other countries with similar incomes. Regarding Jordan's international trade position with the U.S., our exports to Jordan in 2009 were valued at $1.19 billion, representing nearly 16 percent of all Jordanian imports. Exports from Jordan to the U.S. for that same period were valued at $924 million, with two-way trade reaching $2.11 billion. Currently, under King Abdullah, Jordan has undertaken a major program of economic change, including the elimination of most fuel and agricultural subsidies, the passage of legislation targeting corruption, and the initiation of tax reforms. Key reforms have been undertaken in the information technology, pharmaceutical, tourism, and service sectors. In working toward trade liberalization, Jordan has also joined the World Trade Organization and, in 2001, it co-signed the first bilateral free trade agreement between the U.S. and an Arab country. In 2007 the United States and Jordan signed a Science and Technology Cooperation Agreement, bolstering efforts to help diversify Jordan's economy and promote growth. To date, duties on nearly all our goods and services have been eliminated, providing for more open markets in communications, construction, finance, health, transportation, and services. In addition, Jordan maintains a strict application of international standards for the protection of intellectual property. These changes and agreements facilitate good trading conditions between the U.S. and Jordan.

In the political arena, Jordan's constitutional monarchy has consistently followed a pro-Western foreign policy, maintaining close relations with the United States. The U.S. has participated with Jordan and Israel in trilateral development discussions, key issues being water-sharing and security; cooperation on Jordan Rift Valley development; infrastructure projects; and trade, finance, and banking issues. U. S. development efforts continue to address Jordan's health indicators, road and water networks, education levels, resource conservation, and provide grants and loans for purchasing U.S. agricultural commodities.

Cleantech

Clean technologies, in general, are a top priority for the Government of Jordan. The Ministry of Environment and municipal government authorities continue to hold numerous workshops focusing on environmentally sustainable city planning & development, pollution control, and water and wastewater treatment. Renewable energies (solar, wind, biogas), energy resources, and green building are big topics as well. Such workshops allow international participants to establish direct ties with the environmental private sector and government officials in Jordan.

Looking at the water sector, Jordan's water scarcity continuously triggers demand for water conservation technology and management at all levels of use. Jordan is currently exploring ways to expand its water supply and use its existing water resources more efficiently, including through regional cooperation. Given Jordan's large population growth, limited renewable water resources, and deteriorating water quality, the effective management and efficient use of water resources is critical. The Jordanian public water utility is taking on a more regulatory role, and upcoming opportunities for private sector participation and public private partnerships in water management will provide potential for U.S. entities specializing in utility management. Outsourcing of services for some water utilities is expected to become a trend in the coming years. This trend should also lead to opportunities for U.S. firms specializing in the water management sector, including engineering services, contracting, and treatment/desalination technology. Jordan's recent receipt of $400 million in Millennium Challenge Corporation (MCC) compact funding is expected to generate large-scale projects related to water supply, leak reduction, collection, delivery, desalination, wastewater treatment and wastewater reuse. The MCC is also considering programs to help poor households utilize limited water supplies more efficiently and effectively (*see http://www.mcc.gov*). USAID is currently financing several projects in Jordan related to water, giving priority to American equipment suppliers (*see http://www.usaidjordan.org*). Other governmental projects funded by multi-lateral lending institutions such as the World Bank also exist.

In the energy sector, Jordan depends on external sources for the majority of its ever-growing requirements. Particularly in renewable energy and power generation, municipal gas systems, and oil shale development, the energy sector is a key growth industry. In 2007 the country developed a new energy strategy that aims to create more indigenous and renewable energy sources, including oil shale. Best prospects for electricity generation in Jordan are related to independent power projects (IPPs). There are tremendous opportunities for U.S. investors interested in concessions in electricity generation. There are also possibilities in the areas of solar energy, and waste-to-energy investments, electricity loss reduction, and oil shale extraction. In addition, the Government of Jordan is studying the idea of distributing natural gas coming from Egypt to Jordanian houses and industrial complexes. Implementing this idea will open up a new market, as Jordan currently lacks expertise in gas distribution networks. U.S. agency financed procurement opportunities and projects in these sectors are available and advertised on the Federal Web site: *http://www.fedbizopps.gov.* They are expected to be mainly in the areas of consulting and technical assistance, focusing on renewables, energy management, and efficiency. The U.S. Trade & Development Agency, *http://www.ustda.gov,* funds feasibility studies and grants in these areas as well.

Jordan is now undergoing rapid expansion and investment. As Jordan has limited resources, conservation is a priority; both the Government and its citizens are encouraged to incorporate sustainable building design and technology in construction. The lower subsequent electricity and water consumption resulting from green building would allow for recouping of related additional investments, making a compelling case for the spreading of green build technologies in Jordan in the near future. Toward this goal, Jordan would need to import renewable energy technology and other building materials, creating additional opportunities for U.S. companies.

Healthcare Equipment, Services, and Technologies

Jordan has one of the strongest markets in the region for healthcare. Through 44 public hospitals and 60 private hospitals, it provides healthcare equipment and services for its citizens and over 250,000 patients from neighboring countries annually. Its healthcare equipment industry may be categorized into the four subsectors of pharmaceuticals, medical and surgical equipment, lab equipment, and furniture. Local production of medical equipment is limited, and Jordan primarily relies on imports, which totaled $110 million in 2008. Imports are growing and expected to reach $519 million by 2013. The end users of these imports are the Ministry of Health related facilities and the growing private hospitals, clinics, and physicians working there. Medical equipment and pharmaceutical products will continue to be the largest health related expenditure in Jordan, and the U.S. continues to be Jordan's biggest single supplier of the imported equipment and services. It should be mentioned here that the Ministry of Health prohibits the import of used and refurbished medical devices into the Kingdom.

With Jordan's medical sector advancement and its newer focus on medical tourism, its annual number of served patients will increase significantly. Along with this rise, the demand for medical equipment and supplies will continue to grow by 38.9% between 2010 and 2013, from US$1.80 billion to US$2.50 billion. This increase in focus and demand will require upgrades in both public and private medical services, facilities and institutions, and the quality of hospital and clinic management, and administration. Primary healthcare sector reforms will include renovating and adding medical diagnostic devices and therapeutic equipment; improving the quality of healthcare, healthcare professional training, and hospital services; upgrading hospital infrastructure; developing and implementing health information systems; and increased medical research. Upgrades in medical equipment and services will be targeted in Jordan's rural areas, in line with its healthcare system reforms. Such market expansion and the ripple effect of exposure to U.S. products by Jordanian physicians who have received some form of medical training in the U.S. create many incentives for U.S. providers to enter the Jordanian markets.

The best prospects include consulting in hospital administration, quality control and certification standards; training; and laboratory and hospital administration software. There is also a need for various types of equipment, including sophisticated laboratory diagnostics like C–T, MRI, and PET scanners, laboratory reagents, testing equipment, cardiology and kidney dialysis equipment, as well as hospital furniture. Recent imports of hospital furniture including beds, surgery rooms lighting, and dental equipment exceeded $7.5 million, with U.S. products accounting for nearly a quarter of those imports. The total value of recent ambulance imports was nearly $4 million with the U.S. products accounting for 60% of the purchases. Given the strength of the local industry, Jordan's broad healthcare market will be rich in opportunities for U.S. firms, including licensing agreements and joint ventures with Jordanian companies.

Israel

Israel's government is a parliamentary democracy with a president elected for a 5-year term. It has a unicameral legislature and its governing body is called the Knesset. Today Israel has diplomatic relations with 163 states, including Egypt and Jordan. Commitment to Israel's security and well being has been a cornerstone of U.S. policy in the Middle East since Israel's founding in 1948. Continuing U.S. economic and security assistance to Israel acknowledges these ties and signals U.S. commitment.

Israel has a diversified, technologically advanced economy with substantial but decreasing government ownership and a strong high-tech sector especially in the cleantech, medical, and biotechnology areas. The major industrial sectors include high-technology electronic and biomedical equipment, metal products, processed foods, chemicals, and transport equipment. Israel possesses a substantial service sector and is one of the world's centers for diamond cutting and polishing. It is also a world leader in software development and a major tourist destination. The country's strong commitment to economic development and its talented work force has led to economic growth rates that have frequently exceeded 10% annually. The Israeli economy has continued to grow at an annual growth rate of 4.2%, except for 2009 when it grew only 0.5%. The country entered the global economic crisis with solid fundamentals and the economy has shown signs of an early recovery, with expectations for greater expansion in 2010. Israel's GDP in 2009 was $206.8 billion and its per capita GDP was $28,400.

International trade of goods and services in Israel grew by a healthy 5.2% in 2008, with the United States being Israel's largest single trading partner. In 2008, bilateral trade totaled $28 billion, showing an increase of almost 5% over 2007, even in light of the global economic slowdown. Israel is our 20th largest export market for goods. The two countries signed a free trade agreement in 1985 that progressively eliminated tariffs on most goods traded between the two countries over the following 10 years. Exports of U.S. goods to Israel totaled US$8.64 during the first 11 months of 2009, and US$13.49 billion for that same period in 2008. With a favorable dollar exchange rate, U.S. equipment suppliers currently enjoy a price advantage over EU-based manufacturers.

Trade opportunities between Israel and the U.S. are encouraged through the existence of bi-national funding programs, such as the Israel-U.S. Bi-national Industrial Research and Development (BIRD) initiative, available for U.S. companies to tap towards the goal of mutually beneficial industrial R&D projects. The BIRD Foundation, established by both governments in 1977, covers up to 50 percent of project development and product commercialization costs for companies in the fields of communications, life sciences, electronics, electro-optics, software, homeland security, renewable and alternative energy and other sectors of the hi-tech industry.

Cleantech

Israel has an impressive record in a wide variety of cleantech areas: Utilization and management of water resources, including marginal water and sewage; combating of desertification; and utilization of solar, geothermal energy, and agro-ecology. The Israel Ministry of National Infrastructures Web site, *http://www.mni.gov.il,* lists ongoing and planned programs and initiatives. From recycling centers, to water desalination, to renewable energy power stations, to solar power stations, to wind turbine generators, to photovoltaic panels, there is much room for cooperation and participation.

Energy related clean technologies in Israel provide opportunities for U.S.-Israel commercial partnerships, especially in the areas of renewable energy and natural gas. The BIRD Foundation Energy program, *http://www.birdf.com* offer grants to U.S. and Israeli companies interested in joint development of clean energy technologies. The program is funded by the U.S. Department of Energy, the Israeli Ministry of National Infrastructures, and the BIRD Foundation. These grants help fund joint development in areas such as solar power, biofuels, advanced vehicle technologies, wind energy, smart grid, etc. The annual Eilat Renewable Energy conference and exhibition (*http://www.eilatenergy.com*) provides a good opportunity for U.S. renewable energy companies to share their technologies with Israeli companies.

Israel's fresh water resources are already being exploited to the limit as the demand for water continues to grow with the country's population. An important potential new source is marginal water, e.g. effluents, brackish water and seawater. Tertiary treatment of sewage water and desalination of brackish and seawater can provide the much-needed extra resources. The solution involves ensuring a dependable supply of water for domestic, industrial and agricultural use by the implementation of new government regulations and the construction of large-scale plants for desalination of seawater and reclamation of urban effluents.

Growth in Israel's green building market is stimulated by a recent government initiative encouraging sustainable building practices (i.e. construction related processes that are environmentally responsible and resource-efficient throughout a building's life-cycle). Under this initiative, the government has adopted a green building standard. New and renovated residential and office buildings that comply with the green build standards will provide developers with a marketing advantage and will serve as a measure of the quality of the building for consumers. This development offers good opportunities for the U.S. green build technologies.

Healthcare Equipment, Technologies, and Services

Healthcare is a priority in Israel, a country that spends 8% of its GDP on healthcare. The country boasts a very high level of healthcare and an extensive infrastructure of quality resources that range from local community clinics to world-renowned trauma centers. Israel's demand for medical equipment is steady and while there is no government plan in place for a massive investment in new devices, hospitals are likely to replace equipment on an ad-hoc basis to keep up with the latest, most advanced technologies.

As Israel has the largest per-capita medical device market in the Middle East, and 80% of demand is supplied by imports, its medical equipment market presents good opportunities for U.S. manufacturers. U.S. equipment already accounts for ⅓ of medical imports. Sales of U.S. medical equipment to Israel grew by 6% in 2008 and totaled $174 million—about one-third of Israel's $514 million medical equipment imports. The licensing procedures for American-made, USFDA approved medical equipment are fairly easily facilitated because the Israel Ministry of Health uses the FDA's standards for the purpose of issuing licenses. A favorable

Shekel-Dollar exchange rate is likely to encourage demand for U.S. made medical devices.

Israel also has a high ratio of medical doctors to population (3.5 per 1,000). Many Israeli physicians are both early adopters of new technologies and developers of original technologies in their own right. To support this development, Israel has 466 life science companies, focusing on medical device and biotech. About a half of the medical device companies focus on therapeutic devices with the leading applications being in cardiovascular, oncology, neurology and neurodegenerative. There are also 60 pharmaceutical focused companies located in Israel. Opportunities for U.S. drug companies exist in the area of research, clinical trials and academic and professional exchanges. Other industry areas include diagnostic, imaging and monitoring devices.

A well-developed private sector dominates the areas of dental care, eye laser surgery and plastic/aesthetic surgery and is keeping up demand for advanced medical instruments and appliances. To generate extra income, Israeli hospitals provide private care in addition to public healthcare services. Medical tourism is specifically a growing niche service that helps generate additional income for the healthcare sector and supports market growth. Both private healthcare and medical tourism are likely to demand further upgrades in existing systems and purchase of new equipment. Best sales prospects exist in the advanced medical technologies, instruments and disposables in the following categories: diagnostic imaging, equipment and technologies for pain management, physiotherapy, ozone & oxygen therapy, OR equipment & single use products, point of care and wound management technologies.

The West Bank

The West Bank has a land area of 5,640 square kilometers (including East Jerusalem). Along with Gaza, it is collectively referred to as the Palestinian Territories. The area is located in the eastern part of the Palestinian territories, on the west bank of the Jordan River. To the west, north, and south, the West Bank shares borders with the State of Israel. To the east, across the Jordan River, lies the country of Jordan. The population in the Palestinian West Bank and Gaza is 4 million. The population growth rate is 3.9% and around 50% of the population is 18 years or younger. Based on 2009 CIA World Factbook figures, the GDP in the West Bank was $12.79 billion and its 2008 per capita GDP was $2,900. Last year the local economy grew by 8%.

The West Bank, the larger of the two areas comprising the Palestinian Authority (PA), experienced a limited revival of economic activity in 2009. This revival was a result of inflows of donor assistance, the PA's implementation of economic reforms, improved security, and the relative easing of movement and access restrictions within the West Bank by the Israeli Government. The PA under President Mahmoud Abbas and Prime Minister Salam Fayyad have implemented a largely successful campaign of institutional reforms and economic development that has contributed to increased economic performance, supported by more than $3 billion in direct foreign donor assistance to the PA's budget since 2007. An easing of some Israeli restrictions on West Bank movement and access in 2008 and 2009 also contributed to an uptick in retail and entertainment activity in larger cities. Many American companies have reoriented their marketing efforts to acknowledge the Palestinian market as culturally, economically, and commercially distinct from the Israeli market. To date, dozens of American firms have established agencies and distributorships, and Palestinian consumers have a strong preference for a wide variety of U.S. goods and services. The U.S. Commercial Service in Jerusalem strongly encourages American exporters wishing to market their goods in the West Bank to use local Palestinian agents and distributors to maximize their sales exposure to the local market.

Cleantech

Three electricity distribution companies operate in the West Bank: The Jerusalem District Electric Company (JDECO), serving East Jerusalem, Jericho, Ramallah and Bethlehem; the National Electric Company (NEC), operating in the northern West Bank; and the Southern Electric Company (SELCO), serving the southern areas. These companies purchase electricity from the Israel Electric Corporation (IEC), which they transmit over a grid currently owned by the IEC. In the West Bank, Israel supplies 95% of the electric power used, and the remaining 5% comes from Jordan. The electricity systems in the West Bank require substantial upgrading and expansion to meet current demand. Over the next few years, infrastructure development projects, including upgrading of the electricity network, and establishment of a national electricity distribution company in the West Bank, will mean significant growth for the West Bank economy. Growth opportunities also exist related to a planned solar energy power generation plant.

Regarding other options for local power generation, natural gas resources in the Palestinian Territories are being explored for possible use in the West Bank. The West Bank depends on oil as its main source of energy and Palestinians import all their petroleum products from Israel. Once an infrastructure to transport the gas is developed, natural gas resources here would eliminate the need for total reliance on these expensive imports, and would offer opportunities to U.S. companies, both in major network equipment as well as in diesel generators.

Currently, short- and medium-term environment sector opportunities in the West Bank are small and limited to public projects that are undertaken by municipalities. These are small wastewater treatment or solid waste removal projects that are funded by international donor agencies like USAID and World Bank. However, given the scarcity of water resources in the region, long-term prospects for water treatment for reuse could become a viable prospect. Solid waste removal and recycling could also become a viable industry, following investments made for equipment and public education. The West Bank Water Supply Program aims to increase the amount of fresh water available to the population through the digging of new wells in the West Bank, construction of reservoirs and transmission systems to take water from wells to towns and cities; and building distribution systems to deliver water to homes. This program would create an attractive niche market for U.S. exporters of environmental technologies particularly in desalination and wastewater treatment.

Healthcare Products & Services

The size of the medical equipment and supplies market in the West Bank and Gaza has been estimated to $20 million annually. The market is made up of medical capital equipment, medical supplies, and lab equipment and lab disposable supplies. There is no domestic production of medical equipment and supplies, so Palestinians depend 100% on imports. There are no import duties on U.S.-made goods entering the West Bank, however products are subject to both a purchase tax, and a value added tax that is currently 14.5%. The majority of the Palestinian population relies on medical services provided by public hospitals that are run by the Palestinian Ministry of Health under a general health insurance program. The Ministry is in charge of providing all medical equipment and supplies that are paid for mostly through international donors support programs. The total number of public and private hospitals in West Bank and Gaza is 72 and total number of beds is 5,000.

The U.S. share of the market is roughly 15% of the total, but two factors are expected to change the percentage: The falling value of the U.S. dollar vs. the Euro that makes U.S. exports more competitive and the continued support by USAID of healthcare projects in the West Bank. USAID regulations stipulate that funds can be spent on American-made equipment only, and the Agency has pledged $86 million for the coming five years to help reform the Palestinian healthcare sector.

III. Mission Goals

The goal of this trade mission is to facilitate greater access to the Jordanian, Israeli, and West Bank markets by providing participants with first-hand market information, access to government decision makers, and one-on-one appointments with business contacts, including potential agents, distributors, and partners. As a result of this mission, and in keeping with the goals of the U.S. Commercial Service, and the President's National Export Initiative, companies should look forward to export successes in the region.

IV. Mission Scenario

The trade mission will include the following stops: Amman, Jordan, and Tel-Aviv, and Jerusalem, Israel, with a trip to Eilat, Israel for renewable focused companies. In each city, participants will meet with new business/government contacts. Additional business meetings in other countries in the region can be arranged before or after the mission through the Gold Key Service for an added cost of $700 per city (exclusive of interpreter and transportation costs).

V. Mission Timetable

Saturday, February 19, 2011—U.S. trade mission participants arrive in Jordan; no-host ice breaker.

Sunday, February 20, 2011—Briefings/meetings with Jordanian Government and industry officials. One-on-one business appointments scheduled.

Monday, February 21, 2011—Half day of one-on-one business appointments; incl. lunch. Afternoon van travel to Jerusalem and briefing by U.S. Consulate there. Reception to follow briefings. Transport to hotel for rest of evening.

Tuesday, February 22, 2011—Morning briefings and one-on-one meetings by U.S. Commercial Service, West Bank, and other Government and industry officials to be held in Jerusalem or West Bank, to be determined. Working lunch to be followed by departures to Tel-Aviv, and Eilat, by air, as appropriate. (Renewables focused companies will be attending Eilat Renewables Energy Conference and Exhibition). Transport to hotels in Tel-Aviv and Eilat will be provided for no-host rest of evening.

Wednesday, February 23, 2010—Full day of briefings with Israeli Government and industry officials in Tel-Aviv, incl. no-host lunch. Eilat based companies will have one-on-one meetings while at conference. Evening is free to explore on your own.

Thursday, February 24, 2010—Companies in Tel-Aviv will attend Embassy breakfast followed by participation in one-on-one appointments there. For companies attending Eilat Conference, morning flight to Israel's Sde Dov Domestic Airport, and Tel-Aviv. Full/Half-day appointments dependent upon companies' arrival times in Tel-Aviv. Lunch at participants' expense. Evening networking reception at Ambassador's residence. Participants' debriefing before/at Tel-Aviv hotel, and official end of mission.

Posts will assist in arranging for group sight-seeing for those companies interested in arriving before or staying after the mission.

VI. Participation Requirements

All parties interested in participating in the Executive-led Trade Mission to Jordan, and Israel must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. The objective is for a minimum of 12 and maximum of 15 companies to be selected to participate in the mission from the applicant pool. U.S. companies already doing business with Jordan, Israel, and the West Bank as well as U.S. companies seeking to enter these markets for the first time may apply.

Fees and Expenses

After a company has been selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee for an individual company representative will be $5,300 for large firms and $3,995 for small or medium-sized enterprises (SMEs).*

The fee for each additional firm representative (large firm or SME) is $650. Expenses for travel, lodging, most meals, and incidentals will be the responsibility of each mission participant. The option to participate in the mission is also being offered to U.S.-based firms with an established presence in Jordan, Israel, and the West Bank, or neighboring countries; the same fee structure applies for these firms.

Conditions for Participation

- An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.

Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

Selection Criteria for Participation

Selection will be based on the following criteria:

- Suitability of the company's products or services for the Jordanian, Israeli, and West Bank markets.
- Applicant's potential for business in Jordan, Israel, and the West Bank, including likelihood of exports resulting from the mission.
- Consistency of the applicant's goals and objectives with the stated scope of the mission.
- Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

* An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (*see http://www.sba.gov/services/contracting_opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (*see http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

VII. Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner. Outreach will include posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet Web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. The International Trade Administration will explore and welcome outreach assistance from other interested organizations, including other U.S. Government agencies. Recruitment for the mission will begin immediately and conclude December 27, 2010. Applications will be available online on the mission Web site at *http://www.export.gov/JordanIsraelWestBank.* They can also be obtained by contacting the Mission Contacts listed below. Applications received after December 20, 2010, will be considered if space and scheduling constraints permit.

Contacts

Karen A. Dubin, Senior International Trade Specialist, Global Trade Programs; U.S. Commercial Service, Washington, DC 20230. Tel: 202/482–3786; Fax: 202/482–7801. E-mail: *Karen.Dubin@trade.gov.*

Jonathan Heimer, Senior Commercial Officer; U.S. Commercial Service, U.S. Embassy Tel Aviv. T: 972–3–519–7368; F: 972–3–510–7215. E-mail: *Jonathan.Heimer@trade.gov.*

Sanford Owens, Senior Commercial Officer; U.S. Commercial Service, U.S. Embassy Amman, T: 962–6–590–6629; F: 962–6–592–0146. E-mail: *Sanford.Owens@trade.gov.*

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DEPARTMENT OF COMMERCE

International Trade Adminitration

U.S. Franchise Trade Mission to India Mumbai, Hyderabad, and New Delhi

Mission Description

The United States Department of Commerce, International Trade Administration, U.S. Commercial Service (CS) is organizing a Franchise Trade Mission to India (Mumbai, Hyderabad, and New Delhi) from April 10–15, 2011. The mission will be led by a senior official and will focus on assisting U.S. franchise companies to launch or increase their business in the Indian market. The mission will help participating firms gain market insight, make industry contacts, solidify business strategies, and advance specific projects, with the goal of increasing U.S. business in India.

India is witnessing an unprecedented consumption boom. While the rest of the world still faces the impact of the economic slowdown, India is growing at approximately 8% per year, the second fastest growing economy in the world. This rapidly growing economy has led to a population of over 300–350 million middle-income Indians with high disposable incomes. This group continues to fuel the consumption demand in India. Mission participants will have a first-hand opportunity to assess the market potential in India and meet with key partners. The mission will include business-to-business matchmaking appointments with potential master and regional investors, networking events and meetings with potential investors. The delegation will be comprised of U.S. franchise representatives in various industry sectors with the potential to open or increase operations in India.

Commercial Setting

India is a rapidly changing country. The many factors that contribute to increasing consumption there include the emergence of a young urban elite population with increasing disposable income, changing lifestyles, mounting aspirations, penetration of satellite TV, increasing appetite for western goods, international exposure, options for quality retail space, and greater product choice and availability. The greater demand for goods in India is in turn generating a greater demand for franchises.

The franchise market in India has the potential to grow to $20 billion by 2020. Franchising in India is growing at an impressive rate of approximately 30% per year. Presently, there are 1,200 franchisors in India, of which 25% are of international origin, with U.S. companies the most prevalent. The top prospects for franchising include: Food, education, retail, beauty salons/cosmetics, business services, apparel and travel/tourism. Based on these market trends and previous successes at post, we will focus on food, health/wellness, and services franchisors, as these represent the largest growth areas for U.S. firms.

• *Food Franchising:* The Indian food franchise sector is on fast-track growth in India. The organized food and beverage retail sector is worth approximately $280 million and is growing at 25–30% annually, with franchises constituting approximately 17% of this growth. Food chains such as Yum Brands, McDonalds, Dominos, and Café Coffee Day have aggressive expansion plans for India. Yum Brands, the parent company of the Kentucky Fried Chicken and Pizza Hut fast-food chains, plans to add 40–60 restaurants in the next 12–18 months. Dominos Pizza India has announced an investment of $55–58 million in India over the next three years for expanding its retail fast food chain and manufacturing capacities.

• *Services:* Contributing over 50% to India's GDP during FY 2009 (April 2008 to March 2009), the services sector holds the key for India's rapid economic growth. Education and training services, professional services, and hospitality services tops the list of growing subsectors in the services franchise sector.

• *Health & Wellness:* The $520 million Indian fitness market is growing at 40% annually. The Indian population, particularly young Indians, support the demand for personal fitness products. Middle class Indians are increasingly spending their disposable income on spa treatments, health clubs, and wellness programs due to a growing awareness to lifestyle diseases, peer-influence and exposure to media and advertising.

Now is the time for U.S. franchises to enter the Indian market. After years of advocacy efforts, in December 2009 the Government of India announced a liberalized policy that royalty payments/franchise fees (both one time and ongoing) will not need prior approval from Government authorities, including the Reserve Bank of India. In addition, the caps of $2 million on one time fees and 5% on ongoing fees have now been removed. With these hurdles cleared, more U.S. franchises will seek opportunities in India.

Mission Goals

The goals of the U.S. Franchise Trade Mission to India are to: (1) Introduce U.S. mission participants to the vibrant Indian market, especially in the three main metropolitan cities of Mumbai, Hyderabad and New Delhi; (2) assess current and future business prospects by establishing valuable contacts with prospective investors, franchisors, and franchisees; and (3) develop market knowledge and relationships leading to U.S. export sales.

Mission Scenario

The trade mission will be a springboard for U.S. companies planning to enter the Indian market. Besides learning first-hand about the market and its potential, the trade mission will help U.S. franchisors to initiate or expand their business in India by providing business-to-business introductions and market access information. The mission will also provide networking opportunities for participating companies. The trade mission participants will have the opportunity to participate in briefings, one-on-one matchmaking meetings, site visits, and networking receptions.

The first stop on the mission itinerary is Mumbai, the business and financial center of India, to participate in matchmaking meetings, briefings with industry associations, and a networking reception. CS Mumbai will arrange matchmaking meetings with potential franchisees as well as investors. CS Mumbai will seize opportunities to tap into the wealth of industry contacts and offer matchmaking, and networking opportunities for the mission members.

Then the group will travel to Hyderabad, a booming organized franchise market in India and a destination of many global franchise brands. Hyderabad is the capital of the state of Andhra Pradesh and has a population of 7 million. Hyderabad is India's 5th largest metropolis and is gaining recognition as a dynamic trade and franchise investment destination for many U.S. franchisors, such as Church's Chicken (the first outlet in India) Hard Rock Café, Curves, and more. The trade mission participants will have the opportunity to participate in briefings, a networking reception, and one-on-one meetings.

Finally, the delegation will visit New Delhi, the capital city of India. New Delhi is the largest commercial center of North India and is one of the fastest growing cities in Asia. Along with its satellite towns, New Delhi is the sixth largest metropolitan region in the world, with an estimated population of 20 million, and has a buoyant private sector. With more than 160 embassies and an ever-growing expatriate population, New Delhi is a cosmopolitan city, with its own multi-ethnic and multi-cultural presence.

Participation in the mission will include the following:

- Pre-travel briefings/webinars;
- Embassy/Consulate, and Industry briefings;
- Pre-scheduled meetings with potential partners, investors, and franchisors in Mumbai, Hyderabad, and New Delhi;
- Airport transfers in Mumbai, Hyderabad, and New Delhi;
- Participation in industry receptions in Mumbai, Hyderabad and New Delhi;
- Site visits in Mumbai and New Delhi;
- Newspaper advertisements in the three cities featuring the participating companies.

The precise schedule will depend on the specific goals and objectives of the mission participants.

Proposed Mission Timetable—April 10–15, 2011

Mumbai—April 10–12, 2011

Sunday—April 10, 2011
—Arrive in Mumbai

Monday, April 11, 2011
—Briefing
—One-on-one matchmaking meetings
—Evening Networking reception hosted by the Mumbai Consul General

Tuesday, April 12, 2011
—Morning Site Visit
—Afternoon/Evening departure for Hyderabad

Hyderabad—April 12–13, 2011

Arrive in Hyderabad and check into hotel
—Evening Networking reception hosted by the Hyderabad Consul General

Wednesday—April 13, 2011
—One-on-one matchmaking meetings
—Late Evening depart for New Delhi
—Arrive in New Delhi and check into hotel

New Delhi—April 14–15, 2011

Thursday—April 14, 2011
—Morning—Site visit to Select City Walk, an upscale mall located in South Delhi that houses numerous franchisee outlets. Site visit followed by hosted lunch.
—Evening Networking reception hosted by the Minister Consular for Commercial Affairs

Friday—April 15, 2011
—One-on-one matchmaking meetings
—Late evening/early morning (Saturday) flight back to the United States

Participation Requirements

All parties interested in participating in the Trade Mission to India must complete and submit an application for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. This mission is designed for a minimum of 12 companies to participate in the mission from the applicant pool.

Fees and Expenses

After a company has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee will be $4,885 for large firms and $4185 for a small or medium-sized enterprise (SME),* which includes one representative. The fee for each additional firm representative (large firm or SME) is $750.

* An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (*see http://www.sba.gov/services/contractingopportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing schedule reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (for additional information *see http://www.export.gov/newsletter/march2008/initiatives.html*).

Expenses for lodging, some meals, incidentals, and travel (except for transportation to and from airports in-country) will be the responsibility of each mission participant.

Conditions for Participation

- An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the U.S. Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.
- Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content.

Selection Criteria for Participation

- Suitability of the company's products or services to the mission goals.
- Applicant's potential for business in India, including likelihood of exports resulting from the mission.
- Consistency of the applicant's goals and objectives with the stated scope of the mission.
- Additional factors, such as diversity of company size, type, location, and demographics, may also be considered during the review process.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet web sites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than February 18, 2011. We will inform applicants of selection decision as soon as possible after February 18, 2011. Applications received after that date will be considered only if space and scheduling constraints permit.

Contact Information

Newport, CA U.S. Export Assistance Center

Kristin Houston, Senior International Trade Specialist & CS Global Franchise Team Leader, Tel: 949–660–1688, ext. 314, E-mail: *Kristin.Houston@trade.gov.*

U.S. Commercial Service in India

Mala Venkat, Commercial Specialist, Chennai, Tel: (91–44) 2857 4293, E-mail: *Mala.Venkat@trade.gov.*

Aliasgar Motiwala, Commercial Specialist, Mumbai, Tel: (91–22) 2265 2511, E-mail: *Aliasgar.Motiwala@trade.gov.*

Sathya Prabha, Commercial Assistant, Hyderabad, Tel: (91–40) 2330 4025, *Sathya.prabha@trade.gov.*

Smita Joshi, Commercial Assistant, New Delhi, Tel: (91–11) 2347 2226, E-Mail: *smita.joshi@trade.gov.*

Karen A. Dubin,

Global Trade Programs, U.S. Commercial Service, Office of Trade Missions.

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BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Membership of the National Oceanic and Atmospheric Administration Performance Review Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of Membership of the NOAA Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), NOAA announces the appointment of members who will serve on the NOAA Performance Review Board (PRB). The NOAA PRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service and Senior Professional members and making written recommendations to the appointing authority on retention and compensation matters, including performance-based pay adjustments, awarding of bonuses and reviewing recommendations for potential Presidential Rank Award nominees. The appointment of members to the NOAA PRB will be for a period of 12 months.

DATES: *Effective Date:* The effective date of service of the three new appointees to the NOAA Performance Review Board is September 30, 2010.

FOR FURTHER INFORMATION CONTACT: Jennifer Heyob, Executive Resources Program Manager, Workforce Management Office, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713–6350.

SUPPLEMENTARY INFORMATION: The names and position titles of the members of the NOAA PRB are set forth below:

Louisa Koch, Director, Office of Education Office of Education.

Maureen E. Wylie, Chief Financial Officer Office of the Chief Financial Officer.

Rebecca J. Lent, Director, International Affairs National Marine Fisheries Service.

Alexander E. MacDonald, Deputy Assistant Administrator, Laboratories and Cooperative Institutes and Director, ESRL Oceanic and Atmospheric Research.

Russell F. Smith, III, Deputy Assistant Secretary for International Fisheries Office of the Under Secretary for Oceans and Atmosphere.

Michael V. Culpepper, Chief Human Capital Officer National Institute of Standards and Technology, DOC.

Charles S. Baker, Deputy Assistant Administrator, NESDIS National Environmental Satellite, Data and Information Service.

David M. Kennedy, Acting Assistant Administrator for Ocean Services and Coastal Zone Management National Ocean Service.

Laura K. Furgione, Deputy Assistant Administrator for Weather Service National Weather Service.

John S. Gray III, Director, Legislative and Intergovernmental Affairs Office of Legislative and Intergovernmental Affairs.

Craig N. McLean, Deputy Assistant Administrator for Programs and Administration, Office of Oceanic and Atmospheric Research.

Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

Dated: September 14, 2010.

Jane Lubchenco,

Under Secretary of Commerce for Oceans and Atmosphere.

[FR Doc. 2010–23959 Filed 9–23–10; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE 9/8/2010 THROUGH 9/16/2010

Firm name	Address	Date accepted for investigation	Products
Amron Enterprises, LLC	1205 N. Frankoma Rd., Sapulpa, OK 74066.	09/13/10	The firm manufactures heat exchanger component parts and full assemblies.
Autotrol Corporation	365 East Prairie Street, Crystal Lake, IL 60014–4414.	09/13/10	The firm manufactures gear motors.
Baker Manufacturing, Inc	11121 Valley Ave E., Puyallup, WA 98372.	09/10/10	The firm performs machining on aluminum, steel and exotic metals.
Circuit Check, Inc	6550 Wedgwood Road, Maple Grove, MN 55311–3643.	09/13/10	The firm manufactures electronic integrated circuit and processor test fixtures for circuit cards, modules and fully assembled products.
Genplex, Inc	7 Industrial Park Road, Skowhegan, ME 04976.	09/14/10	The firm manufactures extruded plastic products (tubing and profile extrusions).
M–C Industries, Inc. d/b/a Polo Custom Products.	3601 S.W. 29th St. Suite 250, Topeka, KS 66614–2074.	09/09/10	The firm manufactures pouches, bags, carrying cases and decorated apparel utilizing custom industrial sewing, RF welding, embroidery and silk screen.
Simpson Door Company	400 Simpson Avenue, McCleary, WA 98557.	09/14/10	The firm manufactures exterior & interior wood doors.
Spinco Metal Products, Inc	1 Country Club Drive, Newark, NY 14513–1250.	09/13/10	The firm manufactures copper and brass tubing and assemblies for refrigeration and HVAC.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: September 17, 2010.

Miriam J. Kearse,

Program Team Lead.

[FR Doc. 2010–23961 Filed 9–23–10; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Foreign-Trade Zone 189—Kent/Ottawa/Muskegon Counties, Michigan Site Renumbering Notice

Foreign-Trade Zone 189 was approved by the FTZ Board on January 15, 1993 (Board Order 616, 58 FR 6614, 2/1/1993) and currently consists of seven "sites" totaling 236 acres in Kent, Ottawa and Muskegon Counties, Michigan. The current update does not alter the physical boundaries that have previously been approved, but instead involves an administrative renumbering that separates certain non-contiguous sites for record-keeping purposes.

Under this revision, the site list for FTZ 189 will be as follows: *Site 1* (8 acres) located at 44th Street and Clay Avenue in the City of Wyoming, Kent County; *Site 2* (18 acres) located at 1920 Lakeshore Drive in the City of Muskegon, Muskegon County; *Site 3* (64 acres) located at 5353 52nd Street in Cascade Township, Kent County, adjacent to Kent County International Airport; *Site 4* (40 acres) located at 500 Mart Street in the City of Muskegon, Muskegon County; *Site 5* (5 acres) located at 449 Howard Avenue in Holland Township in Ottawa County; *Site 6* (80 acres) located at 48th & Thornapple River Drive in Cascade Township, Kent County; *Site 7* (500,000 sq. ft.) located at 1210 and 1218 East Pontaluna Road, Norton Shores, Muskegon County; *Site 8* (15 acres) located at 900 Hall Street SW., Grand Rapids, Kent County; and, *Site 9* (6 acres) located at 2900 Dixie Street, Grandville, Kent County.

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: September 20, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–24033 Filed 9–23–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Foreign-Trade Zone 114—Peoria, IL Site Renumbering Notice

Foreign-Trade Zone 114 was approved by the FTZ Board on December 21, 1984 (Board Order 288, 50 FR 1606, 1/11/1985) and currently consists of seven "sites" totaling 988 acres in the Peoria, Illinois, area. The current update does not alter the physical boundaries that have previously been approved, but instead involves an administrative renumbering that separates certain non-contiguous sites for record-keeping purposes.

Under this revision, the site list for FTZ 114 will be as follows: *Site 1* (88 acres) located at 1925 Darst Street, Peoria; *Site 2* (150 acres) located at 603 North Main Street, East Peoria; *Site 4* (2 acres) located at 5703 West Smithville Road, Bartonville; *Site 5* (37 acres) located at 278 Koch Street, Pekin; *Site 6* (17 acres) located at 6409 West Smithville Road, Bartonville; *Site 7* (360 acres) located at the former Chanute Air Force Base, 601 S. Century Boulevard, Rantoul; *Site 8* (333 acres) located at 659 Knox Road 1440N (U.S. 150 East and I–74), Galesburg; and, *Site 9* (145,000 sq. ft.) located at 2314 E. Wilkins Drive, Mossville.

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: September 17, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–24035 Filed 9–23–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XY60

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Missile Launch Operations from San Nicolas Island, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice; request for comments on proposed revised Letter of Authorization.

SUMMARY: In June, 2009, pursuant to the Marine Mammal Protection Act (MMPA), NMFS issued regulations to govern the unintentional taking of marine mammals incidental to U.S. Navy (Navy) missile launch operations, a military readiness activity, from San Nicolas Island (SNI), California, for the period of June 2009 through June 2014. The second Letter of Authorization (LOA) for the incidental take of marine mammals during the described activities and specified timeframes is effective from June 4, 2010, through June 3, 2011. Following issuance of the LOA, the Navy submitted a revised monitoring plan for their activities at SNI. NMFS is proposing to issue a revised LOA, which would incorporate the revised monitoring plan, to replace the one that is currently in effect.

DATES: Comments and information must be received no later than October 25, 2010.

ADDRESSES: Comments on the revised monitoring plan should be addressed to Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *PR1.0648–XY60@noaa.gov*. NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10–megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the revised monitoring plan may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, 301–713–2289, or Monica DeAngelis, NMFS, 562–980–3232.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. However, for military readiness activities, the National Defense Authorization Act (Public Law 108–136) removed the “small numbers” and “specified geographical region” limitations. Under the MMPA, the term “take” means to harass, hunt, capture, or kill, or to attempt to harass, hunt, capture, or kill marine mammals.

Authorization may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements for monitoring and reporting of such taking.

Regulations governing the taking of Northern elephant seals (*Mirounga angustirostris*), Pacific harbor seals (*Phoca vitulina richardsi*), and California sea lions (*Zalophus californianus*), by harassment, incidental to missile launch operations at SNI, were issued on June 2, 2009, and remain in effect until June 2, 2014 (74 FR 26580). The most recent LOA under these regulations was issued on June 4, 2010 (75 FR 28587). For more detailed information on this action, please refer to these documents. The regulations and LOA include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during missile launches at SNI. Northern elephant seals, Pacific harbor seals, and California sea lions are found on various haul-out sites and rookeries on SNI. The current LOA authorizes take of the three pinniped species listed above that may result from the launching of up to 40 missiles from SNI per year. Up to 10 launches per year may occur at night. Nighttime launches will only occur when required by the test objectives, e.g., when testing the Airborne Laser system. The noise generated by Navy activities may result in the incidental harassment of pinnipeds, both behaviorally and in terms of physiological (auditory) impacts. The noise and visual disturbances from missile launches may cause the animals to move towards or enter the water. The current LOA authorizes the following numbers of pinnipeds to be incidentally taken by Level B harassment annually: 474 Northern elephant seals; 467 Pacific harbor seals; and 1,606 California sea lions.

Summary of the Modification

On June 7, 2010, NMFS received a revised monitoring plan for vehicle launches at SNI, California, in association with an LOA issued on June 4, 2010 and in effect through June 3, 2011. The revised monitoring plan was updated to reflect new equipment and procedures proposed by the Navy, along with a proposal to discontinue targeted monitoring of Northern elephant seals. After reviewing the revised monitoring plan, the Marine Mammal Commission (Commission) further recommended that the Navy obtain, analyze, and review existing information regarding potential displacement of Northern elephant seals, Pacific harbor seals, and California sea lions from those rookeries and haul out sites affected by launch activities. NMFS marine mammal surveys from SNI have since been reviewed for any indications of decreasing trends in pinniped abundance or changes in distribution since the take of marine mammals incidental to launches from SNI were authorized beginning in August 2001. The surveys do not indicate any significant changes in abundance or distribution; therefore, NMFS proposes that the Navy's revised monitoring plan remain as is. The following are the only proposed modifications to the current LOA; all other mitigation and monitoring requirements would remain unchanged.

Nighttime Launches

The Navy recently acquired forward looking infrared (FLIR) HS–324 Command thermal imaging cameras for nighttime monitoring of pinnipeds before, during, and after each missile launch. Previously, no cameras were available for nighttime monitoring of pinniped haul out sites. The thermal imaging cameras, made by FLIR Systems, Inc., would be located to overlook haul out sites up to 6 hours prior to a launch, depending on safety restrictions. Placement of the cameras would cause minimal disturbance to pinnipeds and would focus on a subgroup of pinnipeds within the haul out aggregation. The cameras record data internally and are capable of storing more than 5 hours of video; however, they do not record sound, so no simultaneous audio recording separate from the acoustic monitoring data, collected as described in the regulations (74 FR 26580) and current LOA (75 FR 28587), would be available. Navy biologists would make direct visual observations of the pinniped groups, prior to deployment of the thermal imaging cameras, in order to record weather conditions, species, locations of any pinnipeds hauled out, etc.

Monitoring of Northern Elephant Seals

The Navy proposes to eliminate targeted monitoring of Northern elephant seals during all future launches of Vandal- and Coyote-size, and smaller, vehicles on SNI. During the majority of launches monitored over the past 9 years, Northern elephant seals exhibited little reaction to vehicle launches. The Navy's most recent monitoring report estimated that zero Northern elephant seals were harassed by launches from SNI. During future launches, Northern elephant seals would only be monitored if they happen to be alongside other monitored pinniped species (i.e., Pacific harbor seals and California sea lions) and in the camera's field of view. Monitoring sites would be chosen based primarily on the presence of Pacific harbor seals and California sea lions. By eliminating targeted monitoring of Northern elephant seals, the Navy would focus on these more responsive pinniped species and remaining questions about the frequency and extent of these responses. All other aspects of the Navy's monitoring requirements, as stated in the regulations (74 FR 26580) and current LOA (75 FR 28587), would remain the same.

Summary of Activity and Monitoring Conducted During 2010

The Navy submitted a preliminary, qualitative review of marine mammal monitoring activities between June 4, 2010, and September 1, 2010, as part of their proposal for a revised monitoring plan. The review briefly describes two single launches from SNI on two different days. These launches occurred during daylight hours. A single Coyote missile was launched on each of two days, June 9 and July 8, 2010, from the Alpha Launch Complex located 190 m (623 ft) above sea level on the west-central part of SNI. For each launch, three remote video cameras and three or four audio recorders were deployed at varying distances from the launch site. Trained staff also collected general information on environmental conditions and the status and behavior of focal animal groups prior to and following each launch. Behavioral responses were similar to those observed during previously monitored launches. The authorized level of take was not exceeded, and no evidence of injury or mortality was observed during or immediately succeeding the launches for the monitored pinniped species.

Proposed Authorization

The Navy continues to comply with the requirements of the current 2010 LOA. NMFS has preliminarily determined that this action would continue to have a negligible impact on the affected species or stocks of marine mammals on SNI, and there are no subsistence uses of these three pinniped species in California waters. Accordingly, NMFS proposes to issue a revised LOA to the Navy authorizing the take of three marine mammal species, by harassment, incidental to missile launch activities from SNI. The revised LOA would expire one year from the date of issuance.

Dated: September 20, 2010.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–24026 Filed 9–23–10; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds services to the Procurement List that will be provided by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 10/25/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 6/11/2010 (75 FR 33270–33271) and 7/16/2010 (75 FR 41451), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the services to the Government.

2. The action will result in authorizing small entities to provide the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Grounds Maintenance Service, Great Lakes Naval Training Center, Great Lakes, IL.
NPA: Challenge Unlimited, Inc., Alton, IL.
Contracting Activity: Dept of the Navy, Naval FAC Engineeering CMD Midwest, Great Lakes, IL.

Service Type/Location: Transcription Service, US Army, US Army War College, Carlisle, PA (Offsite: 5590 Derry Street, Harrisburg, PA).
NPA: InspiriTec, Inc., Wilmington, DE.
Contracting Activity: Dept of the Army, PR W6BA ACA, Carlisle Barracks, PA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–23942 Filed 9–23–10; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to the Procurement List.

SUMMARY: The Committee is proposing to add the services to the Procurement List that will be furnished by the nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: 10/25/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the services listed below from the nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the services to the Government.

2. If approved, the action will result in authorizing small entities to provide the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to Procurement List provided by the nonprofit agencies listed:

Services

Service Type/Location: Custodial Service, USARC Young Hall, 120 Mini Drive, Vallejo, CA.
NPA: Solano Diversified Services, Vallejo, CA.
Contracting Activity: Dept of the Army, XR W6BB ACA Presidio of Monterey, Presidio of Monterey, CA.

Service Type/Location: Parts Machining Service, Defense Logistics Agency-wide.
NPAs: Arizona Industries for the Blind, Phoenix, AZ.
Wisconsin Enterprises for the Blind, Milwaukee, WI.
The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA.
Contracting Activity: Defense Logistics Agency, Fort Belvoir, VA.

Patricia Briscoe,

Deputy Director, Business Operations.

[FR Doc. 2010–23940 Filed 9–23–10; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Technology Advisory Committee Meeting

AGENCY: Commodity Futures Trading Commission ("CFTC").

ACTION: Notice of meeting of Technology Advisory Committee.

SUMMARY: The Technology Advisory Committee will hold a public meeting on October 12, 2010, from 1 p.m. to 5 p.m., at the CFTC's Washington, DC headquarters.

DATES: The meeting will be held on October 12, 2010 from 1 p.m. to 5 p.m. Members of the public who wish to submit written statements in connection with the meeting should submit them by October 11, 2010.

ADDRESSES: The meeting will take place in the first floor hearing room at the CFTC's headquarters, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Written statements should be submitted to: Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention: Office of the Secretary. Please use the title "Technology Advisory Committee" in any written statement you may submit. Any statements submitted in connection with the committee meeting will be made available to the public.

FOR FURTHER INFORMATION CONTACT: Laura Gardy, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5354.

SUPPLEMENTARY INFORMATION: The agenda for the meeting is as follows:

Opening Remarks

Overview of Meeting and Introduction of Presenters

Panel I: CFTC Staff Briefing on Disruptive Trading Practices and New Anti-Manipulation Rulemaking
Panel II: High Frequency Trading, Algorithmic Trading and Direct Market Access (DMA) Rules and Best Practices
Panel III: Swap Execution Facilities (SEFs): Which Models Provide the Best Opportunity To Achieve Statutory Goals and Support Regulatory Objectives? Where does technology need to take us to provide for pre-trade transparency?
Panel IV: Swap Data Repositories (SDRs): Real Time Reporting, Data Elements, and Interim Requirements: Identifying the Most Effective Procedures and Processes for the Collection, Transfer, and Aggregation of Data
Concluding Remarks and Discussion of Topics for Next Meeting

The meeting will be webcast on the CFTC's Web site, *http://www.cftc.gov.* Members of the public also can listen to the meeting by telephone. The public access call-in numbers will be announced at a later date.

Authority: 5 U.S.C. app. 2 10(a)(2) .

Dated: September 20, 2010.

By the Commodity Futures Trading Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–23870 Filed 9–23–10; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0125]

Privacy Act of 1974; System of Records

AGENCY: Defense Commissary Agency.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Commissary Agency proposes to add a system of records to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on October 25, 2010, unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843 Pentagon, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Camillo R. DeSantis at (804) 734–8000, x48116.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Privacy Officer, Office of General Counsel, Defense Commissary Agency, 1300 E Avenue, Fort Lee, VA 23801–1800.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on September 13, 2010, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996; 61 FR 6427).

Dated: September 20, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

ZDO–001

SYSTEM NAME:

Accountability Records/Recall Rosters

SYSTEM LOCATIONS:

Defense Commissary Agency (DeCA), 1300 E Avenue, Fort Lee, VA 23801–1800.

DeCA East, 1300 E Avenue, Fort Lee, VA 23801–1800.

DeCA West, 3401 Acacia Street, Suite 115, McClellan, CA 95652–1002.

DeCA Europe, Building 2780, Unit 3060, APO, AE, 09021.

DeCA Facilities Construction and Sustainment Division (DOF), 2250 Foulois Street, Suite 2, Lackland AFB, TX 78236–1039.

DeCA Construction-Design Branch (AMDF), 2250 Foulois Street, Suite 2, Lackland AFB, TX 78236–1046.

DeCA Zones, Central Distribution Centers (CDC), Central Meat Processing Plants (CMPP) and Stores—A complete listing of zone, CDC, CMPP and store locations at which recall rosters are maintained can be obtained at Headquarters, Defense Commissary Agency, *Attn:* Continuity Program Manager, 1300 E Avenue, Fort Lee, VA 23801–1800.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current DeCA Federal employees, military personnel assigned or detailed to DeCA, contractors at the headquarters, region, zone, and store level. Non-DeCA personnel whose job responsibilities include a requirement to be aware of the status of DeCA and its commissaries, including Department of Defense (DoD) Federal employees, military service personnel not assigned to DeCA, personnel of the military service exchange services (Army Air Force Exchange Service (AAFES)/Navy Exchange Service Command (NEXCOM)/Marine Corps Exchange (MCX)/Coast Guard Exchange System (CGES) personnel). Additional information maintained in the system includes DeCA business partner's personnel that include personnel of contractors, manufacturers, vendors, brokers and distributors doing business with DeCA).

CATEGORIES OF RECORDS IN THE SYSTEM:

First and last name, organization consisting of division/staff office/region/zone/store;, mission essential status, designated Emergency Operations Center (EOC) duty officer status, Emergency Relocation Group status, job title, work, home, personal and government cell phone, home address (including directions to facilitate location), home e-mail address, telework status, name of emergency contact not residing in the employee's household, emergency contact's home address (including directions to facilitate location), phone number or e-mail address of emergency contact.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental regulations; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 147, Commissaries and Exchanges and Other Morale, Welfare, and Recreation Activities; National Security and Homeland Security Presidential Directive-51/Homeland Security Presidential Directive-20, National Continuity Policy; Department of Defense Directive 3020.26, Department of Defense Continuity Programs; and Department of Defense Instruction 3001.02, Personnel Accountability in Conjunction with Natural or Manmade Disasters.

PURPOSE(S):

To notify designated DeCA mission essential personnel, Emergency EOC duty officers/members, Emergency Relocation Group members, and other DeCA personnel, including those on pre-designated telework status to report for duty during drills, emergencies, activation of the EOC, and/or Continuity of Operations (COOP) exercises or operations.

To contact DeCA personnel during emergency situations in order to notify them of the status of their place of duty and to determine their current location and current health, welfare and safety status.

To contact designated emergency contacts of DeCA personnel in the event efforts to contact personnel failed and the current location, health, welfare and safety status of employee cannot be determined.

To communicate with non-DeCA personnel whose job responsibilities include a requirement to be aware of the status of DeCA and its commissaries, including Department of Defense (DoD) civilian personnel, military service personnel not assigned to DeCA, personnel of the military service exchange services (Army Air Force Exchange Service (AAFES)/Navy Exchange Service Command (NEXCOM)/Marine Corps Exchange (MCX)/Coast Guard Exchange System (CGES) personnel), and DeCA business partners personnel that includes personnel of contractors, manufacturers, vendors, brokers and distributors doing business with DeCA.

To communicate with DeCA and non-DeCA personnel during non-duty hours as necessary to facilitate management and business functions required for the administration of a 24/7, worldwide organization.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, state, or local governments during actual emergencies, exercises or continuity of operations tests for the purpose of responding to emergency situations.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Defense Commissary Agency's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage:

Paper file folders and electronic storage media.

RETRIEVABILITY:

Records are retrieved by name, organization, mission essential status, emergency relocation group status, telework status or emergency operations duty officer/member status.

SAFEGUARDS:

Electronic records are maintained in password-protected network and accessible only to DeCA personnel, management, and administrative support personnel on a need-to-know basis to perform their duties. Access to the network where records are maintained requires a valid Common Access Card (CAC). Electronic files and databases are password protected with access restricted to authorized users. Paper records are secured in locked cabinets, offices, or buildings during non-duty hours. The same security standards currently applied to individually issued CAC cards are applicable to paper compilations limited to a particular organization issued to individual supervisors, managers and employees of that organization.

RETENTION AND DISPOSAL:

Records are destroyed upon termination/departure of DeCA personnel or when superseded. Electronic records are manually deleted from the agency virtual file cabinet under the supervision of agency records managers upon supersession of the record. Paper records are shredded using a cross-cut shredder that reduces the records to confetti form or better upon supersession of the record.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Performance and Policy and Component Continuity Coordinator, 1300 E Avenue, Fort Lee, VA 23801–1800.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, DeCA, 1300 E Avenue, Fort Lee, VA 23801–1800.

Requests should contain name, home address and home phone number for positive identification of requester.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, DeCA, 1300 E Avenue, Fort Lee, VA 23801–1800.

Requests should contain name, home address and home phone number for positive identification of requester.

CONTESTING RECORD PROCEDURES:

The DeCA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 327, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual, supervisors, existing databases (*i.e.* Defense Civilian Personnel Data (DCPDS), Fouth Estate Personnel Accountability and Assessment System (FEPAAS), Defense Logistics Agency (DLA) and Office of Personnel Management (OPM) Electronic Official Personnel File (eOPF)), computer access or information security documentation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–23876 Filed 9–23–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the North Branch Ecorse Creek, Flood Risk Management General Reevaluation Study, Wayne County, MI

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE), Detroit District, is issuing this Notice of Intent (NOI) to prepare a Draft Environmental Impact Statement (EIS) for flood risk management measures along the North Branch Ecorse Creek (NBEC) in Wayne County, MI. The Draft EIS is being prepared in conjunction with a General Reevaluation Report (GRR) of the NBEC to reevaluate the feasibility of providing flood risk management measures. The GRR/EIS is being completed in partnership with Wayne County, MI. The Draft EIS will address potential environmental impacts of the construction, operation, and maintenance of a number of structural and non-structural alternatives that will be evaluated as part of the GRR study.

DATES: A public meeting on the study will be held on October 28, 2010 at 7 p.m.

ADDRESSES: The meeting will be held at the Canfield Community Center, 1801 N. Beech Daly Road, Dearborn Heights, MI.

FOR FURTHER INFORMATION CONTACT: For information or questions concerning the Draft EIS please contact Ms. Florence Bissell, Environmental Analysis Branch, U.S. Army Corps of Engineers, Detroit District, 477 Michigan Avenue, P.O. Box 1027, Detroit, MI 48231–1027, at (313) 226–3510 or at *florence.k.bissell@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

Background: The NBEC has experienced severe flooding over the last 40 years, resulting in property damage, sewage back-ups, road closures and other impacts that have threatened or resulted in lost property, environmental and health degradation, and lost economic value. Severe flooding in 2000 and 2004 negatively impacted over 9,000 individual properties. USACE Detroit District, and Wayne County, MI acting as the non-federal sponsor, have formed a partnership to reevaluate the flooding issues along the NBEC. The GRR/EIS, will update a feasibility study and EIS completed by USACE in 1988. The purpose of this GRR/EIS is reanalysis of the federal interest in developing flood risk management measures on the NBEC. The analysis will include reformulation of the authorized plan from the 1988 study for applicability. The GRR/EIS will incorporate a review of developments in the floodplain during the last 22 years, consideration of changing needs of the local communities, and current environmental conditions. When complete, the GRR/EIS will recommend if flood mitigation measures should occur with federal assistance. Federal funding for the GRR/EIS phase originates from American Recovery and Reinvestment Act funds, which requires the GRR/EIS to be developed on an accelerated schedule.

Project Authority: The GRR/EIS is being completed based on authorization by Section 102 of the River and Harbor Act of 1966 (Pub. L. 89–789). The original study *Feasibility Report and Environmental Impact Statement for Flood Protection in the Ecorse Creek Drainage Basin, Wayne County, Michigan, 1987 (Revised 1988)* recommended the development of a retention basin as the selected plan. Construction of the selected plan from the 1988 feasibility study was further authorized by Section 101(a) (14) of the Water Resources Development Act (WRDA) of 1990. Construction never occurred. Project authorization was extended in Section 3179 of the WRDA of 2007 to conduct the GRR.

Project Alternatives: A number of flood risk management alternatives will be evaluated as part of the GRR/EIS including retention basins, stream widening and restoration, flood walls and levees, along with non-structural measures such as management plans, warning systems and property acquisition.

Draft EIS Scoping Process: The scoping process for public input will involve Federal, State, and local agencies, along with affected Indian tribes, other interested parties and entities. Coordination with natural resources and environmental agencies will be conducted under the Fish and Wildlife Coordination Act, Endangered Species Act, Clean Water Act, Clean Air Act, and the National Historic Preservation Act. A public meeting will be held (*see* **DATES**) to include discussion of environmental issues associated with potential flood risk management alternatives.

Issues to be considered during the development of the Draft EIS and public review and input process include: aesthetics, dredged material disposal, water quality, air and noise quality, hazardous, toxic and radiological waste, threatened and endangered species, environmental justice, wetlands, historic properties, recreation, cumulative impacts, natural resource mitigation and other issues that may affect public health and welfare. It is estimated the Draft EIS will be available for public review and comment in late 2011.

John M. Niemiec,

Project Manager.

[FR Doc. 2010–23934 Filed 9–23–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare a Legislative Environmental Impact Statement for the Proposed Extension of the Chocolate Mountain Aerial Gunnery Range Land Withdrawal

Lead Agency: Department of the Navy, DoD.

Cooperating Agency: Bureau of Land Management, Department of the Interior.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 and regulations implemented by the Council on Environmental Quality (40 Code of Federal Regulations [CFR] Parts 1500–1508), the Department of the Navy (DoN) and the United States Marine Corps (USMC), with the cooperation of the Bureau of Land Management (BLM), intends to prepare a Legislative Environmental Impact Statement (L–EIS) and conduct public scoping meetings for the proposed extension of the withdrawal of approximately 226,711 acres of public land in Imperial and Riverside counties, California, for continued military use of the Chocolate Mountain Aerial Gunnery Range (CMAGR).

The California Military Lands Withdrawal and Overflights Act of 1994 (Pub. L. 103–433) withdrew 226,711 acres of public land to DoN, reserving these lands for defense-related purposes for a period of 20 years (until October 31, 2014). The Act provides that the DoN may seek extension of the CMAGR withdrawal. As part of the withdrawal process, the Secretary of the Navy is required to publish a Draft L–EIS addressing legislative alternatives and the effects of continued withdrawal. The CMAGR Draft L–EIS will evaluate the environmental effects of the proposal to extend the land withdrawal for an additional 25 years (through 2039) and will evaluate alternative actions to restructure the existing range boundary for improved efficiency in the management of the CMAGR and adjacent lands.

DATES AND ADDRESSES: DoN is initiating a 90-day public scoping process to identify community interests and specific issues to be addressed in the L–EIS, which starts with the publication of this Notice of Intent (NOI). Four public scoping meetings have been scheduled to enlist written and oral comments regarding the scope of the Draft L–EIS analysis:

1. Monday, December 6, 2010, 5:30 p.m. to 8 p.m., Yuma County Library, Rooms B–C, 2951 S. 21st Drive, Yuma, Arizona 85364;
2. Tuesday, December 7, 2010, 5:30 p.m. to 8 p.m., Holiday Inn Express—El Centro, Conference Room B, 350 Smoketree Drive, El Centro, California 92243;
3. Wednesday, December 8, 2010, 5:30 p.m. to 8 p.m., Holiday Inn, 1800 E. Palm Canyon, Palm Springs, California 92264; and
4. Thursday, December 9, 2010, 5:30 p.m. to 8 p.m., San Diego Planning Commission Hearing Room, 5201 Ruffin Road, Suite B, San Diego, California 92123.

FOR FURTHER INFORMATION CONTACT: CMAGR L–EIS Project Manager (*Attn:* Kelly Finn), NAVFAC Southwest, 1220 Pacific Highway, San Diego, CA 92132–5190; phone 619–532–4452. Additional supplementary information regarding the CMAGR Draft L–EIS is available at *http://www.chocolatemountainrenewal.com.* Please submit requests for special assistance, sign language interpretation for the hearing impaired, or other auxiliary aids needed at the scoping meeting to the L–EIS Project Manager by November 26, 2010.

SUPPLEMENTARY INFORMATION: Public scoping meeting schedules and locations will also be published in local newspapers. The public is invited to attend these meetings to view project-related displays, speak with DoN and USMC representatives, and submit public comment forms at information stations. A court reporter will be available at the meetings to accept oral comments. The scoping meetings will be conducted in an informal, open house style meeting format. All comments regarding the scope of issues that should be considered in the Draft L–EIS must be received within 90 days of the publication date of this notice to ensure full consideration in the Draft L–EIS analysis.

Submitting Comments: Federal, state, and local agencies and interested parties are encouraged to provide oral and/or written comments regarding the scope of the L–EIS, reasonable alternatives and/or specific issues or topics of interest to the public. Comments may be submitted by: (1) Attending one of the public scoping open houses and providing oral or written comments, (2) submitting a comment form on the project's public website at *http://www.chocolatemountainrenewal.com,* or (3) mail. Written comments should be submitted to the L–EIS Project Manager listed below under **FOR FURTHER INFORMATION CONTACT.** All written comments on the scope of the L–EIS should be submitted and/or postmarked no later than December 23, 2010.

The USMC will consider all comments received during the scoping period. A mailing list has been assembled to facilitate preparation of the L–EIS. Those on this list will receive notices and information related to L–EIS preparation. This list includes local, state, and federal agencies with jurisdiction or other interests in the alternatives. In addition, the mailing list includes affected municipalities and other interested parties. Anyone wishing to be added to the mailing list may request to be added by contacting the L–EIS project manager at the address provided below.

Before including your address, telephone number, email address, or other personal identifying information in your comment, please be aware that your entire comment—including any personal identifying information—may be made publicly available at any time. Although requests can be made to withhold personal identifying information from public review, it may not be possible to keep this information from disclosure.

The CMAGR has served as an aerial bombing and gunnery training range since the 1940s. The CMAGR currently provides more than 700 square miles (459,000 acres) of land, and overlying and adjacent special-use airspace that extends laterally for several thousands of square miles that, among other activities, supports training in air combat maneuvering and tactics; close air support (where air-to-ground ordnance is fired to directly support friendly forces engaged in ground combat); airborne laser system operations; air-to-air gunnery; and air-to-ground bombing, rocketry, and strafing. Artillery, demolitions, small arms, and Navy Special Warfare training are also conducted within the range. The CMAGR is a centerpiece in a much larger training complex that incorporates adjacent and nearby special use airspaces and ranges to support full-spectrum combat operations so that Marines can realistically train as they will fight.

Purpose and Need: The purpose of and need for the proposed CMAGR renewal is for the DoN to retain a military aircrew training range for near- and long-term preparedness of United States tactical air forces. Extending the land withdrawal will provide for the continued effective implementation of ongoing aircrew training while maintaining the flexibility to adapt to the training needs of new technologies as they develop. The performance of air operations in combat is directly related to the quality and depth of training. The CMAGR provides a unique combination of attributes that serve this training requirement, including the favorable location and flying weather; sufficient land and airspace; diverse terrain; and developed training support facilities.

The CMAGR consists of approximately 459,000 acres of desert mountain terrain in Imperial and Riverside counties, California. The land jurisdiction map of the CMAGR closely resembles a checkerboard where every other section (640 acres or 1 square mile) is managed by either the DoN or the Bureau of Land Management (BLM). The DoN owns 232,116 acres of the checkerboard, while the alternate sections of the range (226,711 acres) are made up of withdrawn lands managed by the BLM.

Since the CMAGR comprises DoN-owned and BLM-managed public lands, environmental stewardship for the CMAGR is implemented through the Sikes Act for DoN land and the Federal Land Policy and Management Act for BLM land. Because the management goals and procedures of these acts differ, two separate regulatory schemes are required to administer the checkerboard land jurisdiction pattern of the range. Currently, DoN has full administrative jurisdiction to manage military training and resource management on DoN-owned lands within the CMAGR, and the BLM is responsible for resource management on the alternating sections of public lands withdrawn and reserved for DoN use.

Preliminary Alternatives: A range of alternatives, including the no-action alternative required by NEPA, will be considered. The L–EIS will also consider other reasonable alternatives that are identified during scoping or the preparation of the L–EIS. Four preliminary action alternatives have been identified. Alternatives 2, 3 and 4 would include restructuring the CMAGR boundaries to more closely follow certain prominent geographic features, such as aligning part of the CMAGR boundary to closely parallel but no longer cross features such as the Bradshaw Trail and Coachella Canal.

1. Alternative 1 would extend the current withdrawal with no boundary or jurisdictional changes, for a period of 25 years.

2. Alternative 2 would extend the land withdrawal for a period of 25 years with restructured boundaries and would allocate full administrative jurisdiction for resource management to DoN, in addition to the military activities.

3. Alternative 3 would extend the land withdrawal for a period of 25 years and transfer all custody and accountability for the real property within both the current withdrawal and the restructured boundaries from BLM to DoN. All responsibility for resource management and use of the lands would then reside with DoN.

4. Alternative 4 would extend the land withdrawal for a period of 25 years with the restructured boundaries; management of the military activities would remain with DoN and the resource management would remain with BLM.

5. Under Alternative 5, the No Action Alternative, the existing land withdrawal for the CMAGR, provided by the California Military Lands Withdrawal and Overflights Act of 1994, would expire. The capability to support existing and future training activities at the CMAGR that rely on these lands would cease. No alternative range is located in the operational region that has the weapons training capacity of the CMAGR. Consequently, aircrew and other training terminated at the CMAGR by the No Action Alternative would have to be relocated to ranges elsewhere in the country or curtailed. Range clean-up operations at CMAGR would be required.

Environmental Issues and Resources To Be Examined: The Draft L–EIS will evaluate the potential environmental effects associated with each of the above alternatives and any additional alternatives developed during the scoping period. Issues to be addressed include, but are not limited to, biological resources, cultural resources, geology and soils, hydrology, noise, air quality, safety, hazardous materials and waste, socioeconomics and environmental justice. Relevant and reasonable measures that would avoid or mitigate environmental effects will also be analyzed. Additionally, the USMC will undertake any consultations required by the Endangered Species Act, Clean Water Act, National Historic Preservation Act, and any other applicable law or regulation.

In accordance with the Engle Act of 1958, and the Federal Lands Policy and Management Act of 1976, the DoN is required to file an application with the BLM requesting the Secretary of the Interior process a proposed legislative withdrawal and reservation of public land to continue military training exercises at the CMAGR. The proposed alternatives would withdraw at least 222,041 but not more than 242,058 acres of public land. As a result of the proposed boundary restructuring, approximately 15,347 acres of public land not in the existing 226,711 acre withdrawal would be withdrawn. The restructured boundary would offer the best opportunities to define and manage a secure boundary for the CMAGR, safeguard public use of adjacent public land, and consolidate holdings for more efficient environmental stewardship. The public land would be withdrawn from all forms of appropriation under the public land laws, including surface entry, mining, mineral leasing, and the Materials Act of 1947.

L–EIS Schedule: This notice is the first phase of the L–EIS process and announces the 90-day public comment period and public scoping meetings to identify community concerns and local issues that should be addressed in the L–EIS. The next phase occurs when a Notice of Availability (NOA) is published in the **Federal Register** and local media to publicly announce the release of the Draft L–EIS. A minimum 45-day public comment period for the Draft L–EIS will commence upon publication of the NOA in the **Federal Register**. The USMC will consider and respond to all comments received on the Draft L–EIS when preparing the Final L–EIS. After publication of the Draft L–EIS, one or more public hearings will be held, and public notice will be given regarding the time and place of the hearing(s). The Draft L–EIS will be available for public and agency review and comment before the public hearing(s).

Dated: September 17, 2010.

D.J. Werner,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–23984 Filed 9–23–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Intent To Prepare an Environmental Impact Statement for Skokomish General Investigation Study, Mason County, WA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the U.S. Army Corps of Engineers (USACE) will prepare an Integrated Feasibility Report/Environmental Impact Statement (FR/EIS) for proposed ecosystem restoration and flood risk management in the Skokomish River Basin which empties into Hood Canal, near Shelton, Washington. The Skokomish Indian Tribe and Mason County are the non-Federal sponsors for the project.

The Skokomish River General Investigation (GI) Feasibility Study for the Skokomish River Basin is being conducted under the authority of Section 209 of the Flood Control Act of 1962 (Pub. L. 87–874).

The Skokomish River channel has been filling with sediment for several decades, resulting in frequent flooding and decreasing natural ecosystem structures, functions, and processes necessary to support critical fish and wildlife habitat throughout the Skokomish River Basin. Increased sediment load, reduced flows, and encroachment of the floodplain by man-made structures are leading to continued degradation of natural ecosystem functions and habitat. The degraded riverine and estuarine aquatic habitat has caused a decline in the population of critical fish and wildlife species, including multiple ESA listed species. Additionally, the channel capacity of the Skokomish River varies significantly. Limited channel capacity causes floodwater to leave the banks at various locations, ultimately causing frequent flooding of local roads, two state highways, agricultural fields, residences, and other structures.

The Skokomish River GI is a basin-wide study; however, work by others, constrain the limit of Corps' involvement to actions primarily in the lower Skokomish River Valley. Problems, opportunities, and objectives will be examined within the context of the entire watershed. Recognizing the relationships between the upper and lower watershed will ensure a comprehensive study overview.

The purpose of the FR/EIS and feasibility study is to evaluate if there is a federal interest in aquatic ecosystem restoration and flood risk management in the Skokomish River Basin.

DATES: Submit comments by October 25, 2010 on the scope of issues to be addressed in the draft FR/EIS.

ADDRESSES: Address all comments concerning this notice to Mr. Patrick Cagney, Environmental Resources Section, U.S. Army Corps of Engineers, Seattle District, P.O. Box 3755, Seattle, WA 98124–3755. Submit electronic comments and supporting data to *patrick.t.cagney@usace.army.mil*

FOR FURTHER INFORMATION CONTACT: Questions regarding the scoping process or preparation of the draft EIS may be directed to Mr. Patrick Cagney, telephone (206) 764–3654, e-mail *patrick.t.cagney@usace.army.mil*

SUPPLEMENTARY INFORMATION:

1. *Study Area:* The Skokomish River Basin (Basin) is located in northwest Washington, predominantly in Mason County. The project study area is comprised of the entire drainage basin, including the estuary at Annas Bay. The river collects drainage from an approximate 240 square mile drainage basin, and eventually flows into southern Hood Canal, an arm of Puget Sound. The river flows out of three sub-basins (South Fork, North Fork, and Vance Creek) into a broad, flat alluvial plain known as the Skokomish River Valley. The Skokomish Indian Reservation is located within the lower valley and extends along the southeast portion of the Olympic Peninsula. The Basin is defined by the Water Resource Inventory Area (WRIA) 16 and is located within U.S. Congressional District #6 of Washington State.

2. *Alternatives:* The EIS will separately evaluate alternatives for aquatic ecosystem restoration and flood risk management. Alternatives that will be evaluated under aquatic ecosystem restoration will include an alternative that uses physical actions to restore the Basin's habitat-forming processes and/or create habitats that have been lost as a result of historic alterations. Example of actions that could occur under this alternative include: increasing floodplain habitat and connectivity, restoring off-channel habitat for juvenile fish, improving estuarine functions and processes, and increasing emergent and riparian vegetation. Another alternative that will be considered will focus on benefits to the several aquatic species listed under the Endangered Species Act. Actions under this alternative could include creation of spawning and

rearing areas, and additional fish supplementation. The no action alternative will also be evaluated.

Alternatives for flood risk management include evaluation of the current levee system. Actions under this alternative may include setback levees to improve flood containment. Another alternative would study the effects of sediment removal and actions could include: sediment traps, dredging and selective gravel removal. Another alternative would focus on nonstructural actions such as flood proofing and education. The no action alternative will also be evaluated.

These alternatives are not final and may change and/or new alternatives may develop during the scoping and NEPA process. A range of ecosystem restoration and flood risk management actions will be investigated and more than one option may be included in the preferred alternative. Additionally, a number of potential ecosystem restoration actions could meet ancillary flood risk management goals.

3. *Scoping and Public Involvement:* This notice of intent formally commences the scoping process under NEPA. As part of the scoping process, all affected Federal, state, and local agencies, Native American tribes, interested private organizations, including environmental interest groups and the general public are invited to comment on the scope of the draft FR/EIS. Comments are requested concerning problems in the basin, possible project alternatives, mitigation measures, probable significant environmental impacts, and permits or other approvals that may be required. The environmental review process will be comprehensive and will satisfy the requirements of NEPA and other relevant Federal, state, and local environmental laws. The public scoping period will occur over a 30-day period to commence on September 24, 2010 and will extend through October 25, 2010. The Draft FR/EIS is expected to be available in November of 2011.

4. *Scoping Meeting:* One public scoping meeting will be held on October 7, 2010 to identify issues of major concern and obtain public input on the range and acceptability of alternatives. This meeting will be held at Mason County Public Works, 100 West Public Works Drive, Shelton, Washington, 98584. An informal open house will be held between 4 and 5:30 p.m. A presentation to summarize the purpose of scoping and existing information will be made between 5:30 and 6 p.m. Then, verbal testimony (maximum 4 minutes) will be taken between 6 and 7 p.m. Written comments may be sent by regular or electronic mail to EIS Scoping Comments c/o Patrick Cagney (*see* **ADDRESSES**). Ongoing communication with agencies, Native American tribes, public interest groups, and interested citizens will take place throughout the EIS development through the use of public meetings, mailings and the Internet. Additional meetings will be scheduled upon completion of the draft EIS.

Anthony Wright,

Colonel, Corps of Engineers, District Commander.

[FR Doc. 2010–23946 Filed 9–23–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; DQE, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy. The Department of the Navy hereby gives notice of its intent to grant to DQE, Inc. a revocable, nonassignable, exclusive license to practice in the United States, the Government-owned invention described below: U.S. Patent 6,895,871 (Navy Case 84072): Issued May 24, 2005, entitled “HAZARDOUS MATERIALS DECONTAMINATION PLATFORM”.

DATES: Anyone wishing to object to the grant of this license has fifteen days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with Naval Surface Warfare Center, Crane Division, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522–5001.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Monsey, Naval Surface Warfare Center, Crane Division, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522–5001, telephone 812–854–4100.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: September 17, 2010.

D. J. Werner,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–23910 Filed 9–23–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.334A (Partnership grants)]

Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP)

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of intent to fund down the fiscal year (FY) 2008 grant slate for the GEAR UP Program.

SUMMARY: The Secretary intends to use the grant slate developed in FY 2008 for the GEAR UP Program authorized by Title IV, Part A of the Higher Education Act of 1965, as amended (HEA), to make new grant awards in FY 2010. The Secretary takes this action because a significant number of high-quality applications remain on the FY 2008 grant slate. We expect to use an estimated $4,481,799 for new awards in FY 2010.

FOR FURTHER INFORMATION CONTACT: James Davis, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8524. *Telephone:* (202) 502–7676 or *via Internet: James.Davis@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Background

On November 5, 2007, we published a notice in the **Federal Register** (72 FR 62449) inviting applications for new awards under the GEAR UP Program.

In response to this notice, we received a significant number of high-quality applications for grants under the GEAR UP Program and made seven new State grant awards and 31 new Partnership grant awards. Additionally, after determining that the amount of FY 2009 funding available for new GEAR UP awards was too small to warrant a new competition, we published a notice in the **Federal Register** on May 8, 2009 (74 FR 21671), of our intent to make FY 2009 GEAR UP program awards by funding down the FY 2008 funding slate. Accordingly, the Department awarded new FY 2009 GEAR UP program awards to the next highest scoring State proposal and the five next highest scoring partnership proposals.

However, many applications that were awarded high scores by peer reviewers still did not receive funding.

We have recently learned that very limited funding is available for new awards under this program in FY 2010. Because any new awards must be made by September 30, 2010, we have decided to select grantees in FY 2010 from the existing slate of applicants from the FY 2008 competition. This slate was developed during the FY 2008 competition using the selection criteria, application requirements, and definitions referenced in the 2007 **Federal Register** notice.

Note: To be eligible to receive a grant pursuant to this notice, all applicants being considered for funding based on the funding slate for the FY 2008 competition must meet all statutory and regulatory eligibility criteria and other requirements for this program.

Program Authority: 20 U.S.C. 1070a–21–1070–28.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: September 21, 2010.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2010–24030 Filed 9–23–10; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9206–7]

2010 Release of CADDIS (Causal Analysis/Diagnosis Decision Information System)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public release.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the public release of the 2010 version of the Causal Analysis/Diagnosis Decision Information System (CADDIS). This Web site was developed to help scientists find, develop, organize, and use environmental information to improve causal assessments of biological impairment. The CADDIS Web site was developed and prepared by EPA's National Center for Environmental Assessment (NCEA), in the Office of Research and Development (ORD), and is available at *http://www.epa.gov/caddis.*

DATES: The 2010 CADDIS Web site will become publically available on September 24, 2010.

Additional Information: For additional information on the CADDIS Web site, please contact the Information Management Team via mail: Mailcode 8601P, National Center for Environmental Assessment, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 703–347–8561; facsimile: 703–347–8691; or e-mail: *caddis@epa.gov.*

SUPPLEMENTARY INFORMATION: Over a thousand water bodies in the United States are listed by states as biologically impaired. For many of these sites, the cause of impairment is reported as "unknown." Before appropriate management actions can be formulated for impaired water bodies, the causes of biological impairment (e.g., excess fine sediments, nutrients, toxics, and other stressors) must be identified. Effective causal analyses require knowledge of the mechanisms, symptoms, and stressor-response relationships for various stressors, as well as the ability to use that knowledge to draw appropriate, defensible conclusions. To aid in these causal analyses, NCEA developed CADDIS, a web-based decision support system to help regional, state, and tribal investigators find, access, organize, and share information useful for causal evaluations in aquatic systems. CADDIS is based on EPA's Stressor Identification process, which is a formal method for identifying causes of impairments in aquatic environments. Features of CADDIS include a step-by-step guide to conducting causal assessments; a summary of relevant causal assessment history and concepts; summary information for common sources and stressors; applied examples of causal assessment methods; information on basic and advanced data analyses; downloadable software tools; and an online application for collaborating on conceptual diagrams and using them to update and access a database of supporting literature.

Dated: September 20, 2010.

Lynn Flowers,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2010–23966 Filed 9–23–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R09—UST–2010–0538; FRL–9205–2]

Agency Information Collection Activities; Proposed Collection; Comment Request; Underground Storage Tank: Information Request Letters, Pacific Southwest Region (Region IX); EPA ICR No. 2405.01, OMB Control No. 2009–NEW

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA's Pacific Southwest Region (Region IX) is planning to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the request to OMB, EPA Region IX is soliciting comments on specific aspects of the information collection as described below.

DATES: Comments must be submitted on or before November 23, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09—UST–2010–0538 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: thomas.ladonna@epa.gov.*
- *Fax:* (415) 947–3530.
- *Mail:* LaDonna Thomas, Environmental Protection Agency, *Mailcode:* WST–8, 75 Hawthorne Street, San Francisco, CA 94105–3901.
- *Hand Delivery:* Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R09–UST–2010–0538. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT:

LaDonna Thomas, Waste Management Division, WST–8, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105–3901; *telephone number:* (415) 972–3375; *fax number:* (415) 947–3530; *e-mail address: thomas.ladonna@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Docket Facility located at the Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA. A complete public portion of the administrative record is available for review at the Docket Facility upon request. The Docket Facility is open from 9 a.m. to 4 p.m., Monday through Thursday, excluding legal holidays, and is located in a secured building. To review docket materials at the Docket facility, it is recommended that the public make an appointment by calling the Docket Facility at (415) 947–4406 during normal business hours. Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA Region IX specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions use;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting the electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA Region IX could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES.**

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are owners and operators of RCRA-regulated underground storage tanks within EPA Region IX, *i.e.,* Arizona, California, Hawaii, Nevada, American Samoa, Guam, the Commonwealth of the Northern Marianas Islands, other U.S. holdings in the Pacific and Indian country (as defined in 18 U.S.C. 1151) that is located within this geographic region or is associated with the Navajo Nation. "Indian Country" is defined in 18 U.S.C. 1151 as:

> (a) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation.

Indian Country that is associated with the Navajo Nation includes, but is not limited to:

1. Land within the exterior boundaries of the formal Navajo Indian Reservation within Arizona, New Mexico, and Utah, including the three satellite Reservations of Alamo, Canoncito and Ramah, but excluding areas of Indian Country associated with the Hopi Tribe; and

2. Lands in the Eastern Navajo Agency that are held in trust by the United States government for the use of the Navajo Nation or for the benefit of individual members of the Navajo Nation or that are dependent Indian communities.

Title: Underground Storage Tanks: Information Request Letters, Pacific Southwest Region (Region IX).

ICR numbers: EPA ICR No. 2405.01, OMB Control No. 2009–NEW.

ICR Status: This ICR is for a new collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 49 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA has already received approval from OMB for its information collection request, entitled "EPA Information Collection Request Number 1360.08, Underground Storage Tanks: Technical and Financial Requirements, and State Program Approval Procedures." This approval grants EPA authority to collect information from owners and operators, as specified in 40 CFR Part 280, that may otherwise be subject to the Paperwork Reduction Act, including owner and operator requirements to bring a tank into service, pursuant to 40 CFR 280.22, and owner and operator requirements to notify the implementing agency of any decision to permanently close or make a change-in-service at an UST system, pursuant to 40 CFR 280.71. ICR No. 1360.08, however, does not include the authority for EPA to request that facility owners and operators submit documents or other information to the Agency upon request. EPA Region IX is seeking approval from OMB to request documents or other information from UST owners and operators within the Region. EPA Region IX's Underground Storage Tanks Program Office (R9 USTPO) is planning to undertake an effort to increase the rate of compliance in Region IX. R9 USTPO has direct implementation responsibilities in Indian country and our data have shown a low rate of compliance. While Indian country is our highest priority because of our direct implementation responsibility, EPA has also reviewed data that suggest facilities outside Indian country are also of concern. In FY 08, the average rate of compliance in Region IX Indian country was 36% and, outside of Indian country, the average was 68%. An information request pursuant to RCRA section 9005 directed to UST facility owners and operators in order to determine compliance will help to increase the rate of compliance.

As a result, R9 USTPO would like to send an information request letter in accordance with RCRA Section 9005 and 40 CFR 280.34 annually to approximately 500 UST facilities. This letter will request that the facility owner or operator send to the R9 USTPO the compliance records that they are already required to keep, but have not previously been asked to submit to the Agency. The information request letter authority was codified in 40 CFR 280.34 of the UST regulations and this regulation and other provisions of the UST regulations also contain specific ongoing facility reporting and record keeping obligations. In accordance with 40 CFR 280.34(c), these records should be kept either on-site or must be readily available at an alternative site and, thus, should be easy to locate. The information is routinely reviewed during inspections, but we believe there is non-compliance that warrants additional collection and believe that these requests will encourage owners and operators to maintain regulatory compliance and will allow the R9 USTPO to better ensure compliance with regulatory requirements for those facilities. The R9 USTPO seeks to continue this request for records from facilities indefinitely and would monitor whether our efforts to increase compliance are successful.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 500.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: One.

Estimated total annual burden hours: 2,500 hours.

Estimated total annual costs: $29,025. This includes an estimated burden cost of $25,000 and an estimated cost of $4,025 for capital investment or maintenance and operational costs.

What is the next step in the process for this ICR? EPA will consider the comments received and revise the ICR, if appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Authority: RCRA Section 9005 and 40 CFR 280.34.

Dated: August 26, 2010.

Jeff Scott,

Director, Waste Management Division, Region IX.

[FR Doc. 2010–23997 Filed 9–23–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8992–8]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements filed 09/13/2010 through 09/17/2010 pursuant to 40 CFR 1506.9.

Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has been including its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the website satisfies the Section 309(a) requirement to make

EPA's comments on EISs available to the public. Accordingly, on March 31, 2010, EPA discontinued the publication of the notice of availability of EPA comments in the **Federal Register**.

EIS No. 20100374, Draft EIS, USFWS, MT, Charles M. Russell National Wildlife Refuge and UL Bend National Wildlife Refuge Comprehensive Conservation Plan, To Provide Alternatives and Identify Consequences, Fergus, Petroleum, Garfield, McCore, Valley, and Phillips Counties, MT, Comment Period Ends: 11/16/2010, Contact: Laurie Shannon 303–236–4317.

EIS No. 20100375, Final EIS, USFWS, 00, Western Snowy Plover Habitat Conservation Plan, Proposed Issuance of an Incidental Take Permit, Oregon Parks and Recreation Department, Oregon Coast, OR, CA, WA, Wait Period Ends: 10/25/2010, Contact: Laura Todd 541–867–4558.

EIS No. 20100376, Draft EIS, USFS, CA, Concow Hazardous Fuels Reduction Project, Propose to Reduce Hazardous Forest Fuels, Plus Establish and Maintain Spaces—Defensible Fuel Profile Zones (DFPZs), Feather River Ranger District, Plumas National Forest, Towns of Paradise, Magalia, Concow, Butte County, CA, Comment Period Ends: 11/08/2010, Contact: Carol Spinos 530–532–8932.

EIS No. 20100377, Final EIS, USFS, CA, Tehachapi Renewable Transmission Project, New Information on Changed Conditions Caused by the Station Fire, Construct, Operate and Maintain New and Upgraded 500 kV and 220kV Transmission Lines and Substations, Special Use Authorization, Angeles National Forest, Los Angeles County, CA, Wait Period Ends: 10/25/2010, Contact: Justin Seastrand 626–574–5278.

EIS No. 20100378, Draft Supplement, USFS, OR, North Fork Burnt River Mining Project, To Provide Additional Information and to Address the Deficiencies Identified by the District Court of Oregon on August 4, 2006, Proposal for Mineral Plans of Operation, Implementation, Wallowa-Whitman National Forest, Unity Ranger District of the Whitman Unit, Blue Mountains, Town of Unity, Baker County, OR, Comment Period Ends: 11/08/2010, Contact: Sophia Miller 541–263–1735.

EIS No. 20100379, Draft EIS, TVA, KY, Tennessee Valley Authority (TVA) Integrated Resource Plan (IRP), To Address the Demand for Power in the TVA Service Area, KY, Comment Period Ends: 11/08/2010, Contact: Charles P. Nicholson 865–632–3582

EIS No. 20100380, Final EIS, USACE, 00, Sabine-Neches Waterway Channel Improvement Project, Proposed Ocean Dredged Material Disposal Site Designation, Southeast Texas and Southwest Louisiana, Wait Period Ends: 10/25/2010, Contact: Janelle Stokes 409–766–3039.

EIS No. 20100381, Draft Supplement, USAF, FL, Eglin Base Realignment and Closure, Proposed Beddown of the Joint Strike Fighter (JSF) and Establishment of an Initial Joint Training Site (IJTS), Implementation, Okaloosa, Walton, and Santa Rosa Counties, FL, Comment Period Ends: 11/08/2010, Contact: Mike Spaits 85–882–2836.

EIS No. 20100382, Final EIS, NPS, CA, Warner Valley Comprehensive Site Plan, Addressing Natural and Cultural Resource Conflicts, Parking and Circulation Improvements in Warner Valley, Implementation, Lassen Volcanic National Park, Plumas County, CA, Wait Period Ends: 10/25/2010, Contact: Louise Johnson 530–595–4444 Ext. 5170.

EIS No. 20100383, Draft Supplement, USFS, NM, Santa Fe National Forest Oil & Gas Leasing, Updated and New Information, Implementation, San Juan Basin, Cuba Ranger District, NM, Comment Period Ends: 11/08/2010, Contact: Jennifer Cramer 505–438–5449.

EIS No. 20100384, Final Supplement, USFS, AK, Programmatic EIS—Exxon Valdez Oil Spill Restoration Plan DOI/DOC, New Circumstances Bearing on the Council's Restoration Effort, Implementation, Prince William Sound, Gulf of Alaska, AK, Wait Period Ends: 10/25/2010, Contact: Laurel Jennings 206–526–4535.

EIS No. 20100385, Final EIS, NSA, MD, Fort George G. Meade, Maryland to Address Campus Development, Site M as an Operational Complex and to Construct and Operate Consolidated Facilities for Intelligence Community Use, Fort George G. Meade, MD, Wait Period Ends: 10/25/2010, Contact: Jeffrey D. Williams 301–688–2970.

Dated: September 21, 2010.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–23974 Filed 9–23–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2010–0681; FRL–8847–5]

Lead in Ammunition and Fishing Sinkers; Disposition of TSCA Section 21 Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On August 3, 2010, several groups filed a petition under the Toxic Substances Control Act (TSCA) section 21 requesting that EPA prohibit under TSCA section 6(a) the manufacture, processing, and distribution in commerce of (1) lead bullets and shot; and (2) lead fishing sinkers. On August 27, 2010, EPA denied the first request due to a lack of authority to regulate lead in bullets and shot under TSCA. EPA's decision is based on the exclusion of shells and cartridges from the definition of "chemical substance" in TSCA section 3(2)(B)(v). EPA is still considering the second request and will respond to that portion of the petition within the 90-day period provided in section 21 of TSCA. This notice explains EPA's reasons for the denial of the request specific to lead bullets and shot.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Christina Wadlington, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (202) 566–1859; *e-mail address: wadlington.christina@epa.gov*.

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; *telephone number:* (202) 554–1404; *e-mail address: TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to you if you manufacture, process, import, or distribute in commerce lead shot or bullets. If you have any questions regarding this action, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2010–0681. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

II. Background

A. What is a TSCA section 21 petition?

Under section 21 of TSCA (15 U.S.C. 2042), any person can petition EPA to initiate a rulemaking proceeding for the issuance, amendment, or repeal of a rule under TSCA section 4, 6, or 8 or an order under TSCA section 5(e) or 6(b)(2). A TSCA section 21 petition must set forth the facts that are claimed to establish the necessity for the action requested. EPA is required to grant or deny the petition within 90 days of its filing. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons for the denial in the **Federal Register**. A petitioner may commence a civil action in a U.S. district court to compel initiation of the requested rulemaking proceeding within 60 days of either a denial or, if the Agency does not resolve the petition, the expiration of the 90-day period.

B. What criteria apply to a decision on a TSCA section 21 petition?

Section 21(b)(1) of TSCA requires that the petition "set forth the facts which it is claimed establish that it is necessary" to issue the rule or order requested. 15 U.S.C. 2620(b)(1). Thus, TSCA section 21 implicitly incorporates the statutory standards that apply to the requested actions. In addition, TSCA section 21 establishes standards a court must use to decide whether to order EPA to initiate rulemaking in the event of a lawsuit filed by the petitioner after denial of a TSCA section 21 petition. 15 U.S.C. 2620(b)(4)(B). Accordingly, EPA generally relies on the standards in TSCA section 21 and in the provisions under which actions have been requested to evaluate petitions. However, because of the absence of legal authority under TSCA to grant the petitioners' first request, this request was resolved without reaching the factual argument set forth by the petitioners. The request was denied based on the scope of EPA's statutory authority.

C. Summary of TSCA Section 21 Petition Received

On August 3, 2010, Center for Biological Diversity, American Bird Conservancy, Association of Avian Veterinarian, Project Gutpile and Public Employees for Environmental Responsibility filed a petition under TSCA section 21 requesting that EPA prohibit under TSCA section 6(a) the manufacture, processing, and distribution in commerce of (1) lead bullets and shot; and (2) lead fishing sinkers. The petition asserts that EPA has the authority to regulate lead in bullets and shot because "lead shot and bullets are properly classified as 'chemical substances' subject to TSCA regulation." (Ref. 1, pp. 57–58).

III. Disposition of the Request With Respect to Lead in Bullets and Shot

On August 27, 2010, EPA denied the first request due to a lack of authority to regulate lead in bullets and shot under TSCA. EPA's decision is based on the exclusion of firearms, shells and cartridges from the definition of "chemical substance" in TSCA section 3(2)(B)(v). This exclusion functions to carve out a discrete set of substances from regulation under TSCA: those used in firearms and ammunition. This plain reading of the statute is consistent with EPA's longstanding interpretation of the six TSCA exclusions at TSCA section 3(2)(B).

The statutory definition of "chemical substance" excludes "any article the sale of which is subject to the tax imposed by section 4181 of the Internal Revenue Code of 1986 (26 U.S.C.A. 4181) (determined without regard to any exemptions from such tax provided by section 4182 or 4221 or any other provision of such code)." 15 U.S.C. 2602(2)(B)(v). Section 4181 imposes a tax on firearms, shells and cartridges. 26 U.S.C. 4181. Bullets and shot, and any lead within them, are contained in shells and cartridges and are therefore excluded from the chemical substance definition. In addition, EPA's plain reading of TSCA is consistent with EPA's long-standing interpretation of TSCA's definition of "chemical substance" and with the purpose of the exemption.

V. Further Consideration of the Request With Respect to Lead in Fishing Sinkers

EPA is still considering the second request contained in the August 3, 2010 petition and will respond to that portion of the petition within the 90-day period provided in section 21 of TSCA.

VI. References

1. American Bird Conservancy, Petition to the Environmental Protection Agency to Ban Lead Shot, Bullets and Fishing Sinkers under the Toxic Substances Control Act. August 3, 2010.

List of Subjects

Environmental protection, Bird, Lead, Lead bullets, Lead fishing sinkers, Lead shot.

Dated: September 21, 2001.

Steve A. Owens,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2010–24025 Filed 9–23–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9206–6]

2010 Fall Meeting of the Ozone Transport Commission

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing the 2010 Fall Meeting of the Ozone Transport Commission (OTC). This OTC meeting will explore options available for reducing ground-level ozone precursors in a multi-pollutant context. The Commission will be evaluating potential measures and considering actions in areas such as performance standards for electric generating units (EGUs) on high electric demand days, oil and gas boilers serving EGUs, small natural gas boilers, stationary generators, energy security/energy efficiency, architectural industrial and maintenance coatings, consumer products, institution

commercial and industrial (ICI) boilers, vapor recovery at gas stations, large above ground storage tanks, seaports, aftermarket catalysts, lightering, and non-road idling.

DATES: The meeting will be held on November 10, 2010 starting at 9 a.m. and ending at 4 p.m.

Location: Sheraton Boston, 39 Dalton Street, Boston, Massachusetts 02199; (617) 236–2000 or (888) 627–7054.

FOR FURTHER INFORMATION CONTACT: For documents and press inquiries contact: Ozone Transport Commission, 444 North Capitol Street, NW., Suite 638, Washington, DC 20001; (202) 508–3840; e-mail: *ozone@otcair.org;* Web site: *http://www.otcair.org.*

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the Control of Interstate Ozone Air Pollution. Section 184(a) establishes an Ozone Transport Region (OTR) comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia. The purpose of the OTC is to deal with ground-level ozone formation, transport, and control within the OTR.

Type of meeting: Open.

Agenda: Copies of the final agenda will be available from the OTC office (202) 508–3840; by e-mail: *ozone@otcair.org* or via the OTC Web site at *http://www.otcair.org.*

Dated: September 7, 2010.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2010–23994 Filed 9–23–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9205–4]

Notice of a Regional Project Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of Lewiston, ME and the Auburn, Maine Water District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the City of Lewiston, Maine and the Auburn, Maine Water District ("Auburn-Lewiston") for the purchase of thirteen separate types of ductile iron pipe fittings (with various quantities for each individual fitting configuration totaling 33 fittings) that are foreign manufactured as part of an upgrade project at the Auburn-Lewiston Water Treatment Facility. This is a project specific waiver and only applies to the use of the specified product for the ARRA project being proposed. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. Based upon information submitted by Auburn-Lewiston, it has been determined that there are currently no domestically manufactured pipe fittings available to meet the Auburn-Lewiston's project construction schedule. The Regional Administrator is making this determination based on the review and recommendations of the Municipal Assistance Unit. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of foreign manufactured pipe fittings by Auburn-Lewiston, as specified in its July 28, 2010 request.

DATES: *Effective Date:* September 15, 2010.

FOR FURTHER INFORMATION CONTACT: Katie Connors, Environmental Engineer, (617) 918–1658, or David Chin, Environmental Engineer, (617) 918–1764, Municipal Assistance Unit (CMU), Office of Ecosystem Protection (OEP), U.S. EPA, 5 Post Office Square, Suite 100, Boston, MA 02109–3912.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111–5, Buy American requirements, to the City of Lewiston, Maine and the Auburn, Maine Water District for the purchase of foreign manufactured pipe fittings as part of its water treatment facility upgrade project. The specific ductile iron fittings are not available from a domestic manufacturer to meet the project construction schedule. Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or a public works project unless all of the iron, steel, and manufactured goods used in the project is produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here the EPA. A waiver may be provided if EPA determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

Consistent with the direction of the OMB Guidance at 2 CFR 176.120, EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as "late" if submitted after the contract date. However, in this case EPA has determined that the Auburn-Lewiston's request, though made after the date that the contract was signed on March 11, 2010, can be evaluated as timely because the supplier informed the subcontractor of the recipient on July 19, 2010 that the domestic manufacturer would not be able to deliver the required type and number of fittings to meet the project schedule/delivery date. The need for a waiver was not determined until after the subcontractor had been informed of the extended delivery delay and further research indicated that there were no domestic manufacturers that could provide the necessary pipe fittings to meet the required project delivery schedule. The recipient could not reasonably foresee the need for such a determination until it was informed that the specific domestic pipe fittings would not be available at the originally scheduled time frame. Accordingly, EPA will evaluate the request as if it were timely.

Auburn-Lewiston is constructing a new Ultraviolet (UV) disinfection treatment facility in order to comply with the Long Term 2 Enhanced Surface Water Treatment Rule requirements of the Safe Drinking Water Act, and part of the work involves the installation of new pipe and pipe fittings. According to information provided by Auburn-Lewiston, there are 13 different fitting types of various sizes and connection types, resulting in a total of 33 individual fittings. The fittings are also required to meet the following specifications: (1) Manufactured to conform with ANSI/AWWA A21.51/C151; (2) inside bituminous coating; and (3) outside primer of TNEMEC Omnithane Series 1.

According to Auburn-Lewiston, the subcontract to furnish and install the ductile iron pipe and pipe fittings was awarded on March 11, 2010 and none of the subcontractors raised any concerns about getting the pipe fittings delivered on time. A purchase order for the ductile iron piping and fittings was placed on April 29, 2010 with an agreed upon shipping date of July 19, 2010 to meet the project schedule.

On July 19, 2010, the supplier received notification from the domestic foundries manufacturing the subject fittings that due to production order backlog, delivery of standard fittings would be delayed at least 4 weeks and delivery of the special, non-standard fittings (long radius bends and large diameter tees) could be delayed at least 8 weeks. The project procurement manager reported that the estimated 4 and 8 week delays were not guaranteed and that the delays could be longer. The possibility of delays was confirmed by EPA's national contractor in conversation with the manufacturer.

The project schedule called for delivery and installation of the ductile iron pipe fittings between July 16, 2010 and August 12, 2010, so the testing of the lines could be initiated prior to September 1, 2010. In addition, the ultraviolet disinfection treatment system testing completion and operator training milestone date is December 8, 2010, with an overall project completion and transfer of facility to the owner date of January 5, 2011. If the delivery of the pipe fittings is delayed until mid-September of 2010, it is estimated that final completion date will be pushed back to at least several weeks. There also has been no guarantee given by the manufacturer that the fittings will be delivered by mid-September, the revised delivery date. According to Auburn-Lewiston, delivery times for certain items are being quoted as long as six months for existing orders.

The project procurement manager solicited quotations and committed delivery times for non-domestic manufactured ductile iron fittings from two local suppliers. Based on the information that was obtained, the non-domestic manufactured ductile iron pipe fittings necessary for the project, with the exception of one 24″ x 4″ tee, could be delivered within a time frame to meet the project schedule. The work could be coordinated to accommodate the later delivery of the 24″ x 4″ tee and preserve the December 8, 2010 overall system testing and operator training milestone date, as well as the January 5, 2011 overall project completion date.

Based on the review conducted by EPA's national contractor, Auburn-Lewiston's claim that the specific ductile iron fittings are not available from a domestic manufacturer to meet project schedule milestones is supported by the available evidence. At least eight additional potential domestic manufacturers of ductile iron pipe fittings were contacted and it was determined that none would be able to meet the required project delivery schedule.

Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay projects that are "shovel ready" by requiring potential SRF eligible recipients, such as the Auburn-Lewiston to either revise their design standards and specifications, or in this situation significantly alter its construction schedule. The imposition of ARRA Buy American requirements in this case would result in an unreasonable delay for this project. To delay this construction would directly conflict with a fundamental economic purpose of ARRA, which is to create or retain jobs.

The April 28, 2009 EPA HQ Memorandum, "Implementation of Buy American provisions of Pub. L. 111–5, the 'American Recovery and Reinvestment Act of 2009' " ("Memorandum"), defines *reasonably available quantity* as "the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design." The same Memorandum defines "satisfactory quality" as "the quality of steel, iron or manufactured good specified in the project plans and designs."

The Municipal Assistance Unit (CMU) has reviewed this waiver request and has determined that the supporting documentation provided by Auburn-Lewiston establishes both a proper basis to specify a particular manufactured good, and that the domestic manufactured good is currently not available to meet the construction schedule for the proposed project. The information provided is sufficient to meet the following criteria listed under Section 1605(b) of the ARRA and in the April 28, 2009 Memorandum: Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the temporary authority to issue exceptions to Section 1605 of the ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients.

Having established both a proper basis to specify the particular good required for this project and that this manufactured good was not available from a producer in the United States, the City of Lewiston, Maine and the Auburn, Maine Water District are hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5. This waiver permits use of ARRA funds for the purchase of non-domestic manufactured pipe fittings documented in Auburn-Lewiston's waiver request submittal dated July 28, 2010. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

Authority: Pub. L. 111–5, section 1605.

Dated: September 15, 2010.

Ira W. Leighton,

Acting Regional Administrator, EPA Region 1—New England.

[FR Doc. 2010–23989 Filed 9–23–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9206–3]

Notice of a Regional Project Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Town of Bristol, RI

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(1) [inconsistent with the public interest] to the Town of Bristol, Rhode Island (Town) for the utilization and installation of two influent and two effluent sluice gates for the facility's two final clarifiers as part of a larger overall wastewater treatment plant upgrade project. This is a project specific waiver and only applies to the use of the specified product for the ARRA project being proposed. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. The Town had been assured by the manufacturer that the sluice gates would be made in a facility in Massachusetts. However, the manufacturer informed the Town of Bristol in writing on July 8, 2010 that

due to an internal miscommunication, the sluice gates that were delivered to the site for installation were actually manufactured in Canada, and not in Massachusetts. The manufacturer has offered to provide these sluice gates at no charge other than the cost for freight and field service. Re-ordering the sluice gates and having them manufactured in the Massachusetts facility would delay the upgrade work to the final clarifiers by at least three months. Unfortunately, the existing final clarifier equipment is failing, and given that existing wastewater flows at the wastewater treatment plant are at seasonal lows, the most opportune time to install the sluice gates would be during the July and August time frame. Based upon information submitted by the Town's consulting engineer, EPA has concluded that requiring the installation of domestic manufactured sluice gates, which would extend the time frame by at least three months, would be inconsistent with the public interest, and that a waiver of the Buy American provisions is justified. The Regional Administrator is making this determination based on the review and recommendations of the Municipal Assistance Unit. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to the requirements of Section 1605(a) of ARRA. This action allows the installation of the foreign manufactured influent and effluent sluice gates, as specified in its July 8, 2010 request.

DATES: *Effective Date:* September 15, 2010.

FOR FURTHER INFORMATION CONTACT: Katie Connors, Environmental Engineer, (617) 918–1658, or, David Chin, Environmental Engineer, (617) 918–1764, Municipal Assistance Unit (CMU), Office of Ecosystem Protection (OEP), U.S. EPA, 5 Post Office Square, Suite 100, Boston, MA 02109–3912.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111–5, Buy American requirements, to the Town of Bristol, Rhode Island for the installation of two influent and two effluent sluice gates for two final clarifiers as part of a wastewater treatment plant upgrade project. Based on the information provided by the Town's design engineer, EPA has determined that it is inconsistent with the public interest for the Town to further delay the project and pursue the purchase of domestically manufactured sluice gates.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or a public works project unless all of the iron, steel, and manufactured goods used in the project is produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here the EPA. A waiver may be provided under Section 1605(b) if EPA determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

Consistent with the direction of OMB's regulation at 2 CFR 176.120, EPA will generally consider a waiver request with respect to components that were specified in the bid solicitation or in a general/primary construction contract or those made after obligating ARRA funds for a project to be a "late" request. However, in this case EPA has determined that the Town's request, though made after the date the contract was signed, can be evaluated as timely because the manufacturer informed the general contractor on July 8, 2010 that due to an internal miscommunication, the sluice gates that were delivered to the construction site had been manufactured in its Quebec, Canada facility. The need for a waiver was not determined until after the general contractor was informed of the miscommunication and delivery of the foreign manufactured sluice gates. The recipient could not reasonably have foreseen the need for a determination until informed of the error. Accordingly, EPA will evaluate the request as if it were timely.

The Town is requesting a waiver of the Buy American provision for installation of two influent and two effluent sluice gates for the facility's two final clarifiers as part of a larger overall wastewater treatment plant upgrade project. The planned upgrades to the final clarifiers include removal and replacement of the following equipment: (a) Two clarifier mechanisms including trusses supporting the sludge rakes; scum skimmers; drive mechanisms and a new walkway; (b) two influent and two effluent sluice gates; (c) scum removal equipment; and (d) effluent weirs and troughs. The sluice gates are necessary for isolating each final clarifier and are currently not functional as they are remain "stuck" in the open position. The existing clarifier mechanisms are over twenty years old and in need of immediate repair. The mechanisms are approximately 75 feet in diameter and scrape the settled sludge to the sludge pump for withdrawal and processing. Each mechanism also incorporates scum removal rake arms and scum troughs that provide scum removal from the surface of the tanks.

One of the final clarifier skimmer arm supports began to fail in June of 2009. The supports became bent making the entire mechanism inoperable. In order to allow the continued removal of the sludge from the bottom of the tank, the sludge collection arms needed to be removed. Since the existing sluice gates were inoperable, the Town was required to hire a diver to disconnect the skimmer support arms. Immediately after the failure of the first final clarifier skimmer, the skimmer arm for the second final clarifier also failed and was also removed. Since the removal of the skimmer arms last summer and until the completion of these proposed upgrades, wastewater treatment plant personnel have been manually removing scum from these tanks.

The Town's general contractor submitted the sluice gate shop drawings for review in February of 2010. The Town's design engineer reviewed the shop drawings and determined that the sluice gates were manufactured in Canada and would not meet the Buy American requirements. This was conveyed to the general contractor in March of 2010. The general contractor was informed by the manufacturer that it had the capability to manufacture the sluice gates at its Orange, Massachusetts facility. Based on the belief of all parties that this would satisfy the Buy American requirements, the project proceeded and the gates were scheduled for delivery and installation in July of 2010. All of the other final clarifier equipment has been delivered to the site and is ready for installation, pending installation of the new sluice gates.

Unfortunately, the manufacturer informed the general contractor on July 8, 2010 that due to an internal miscommunication, the sluice gates that were delivered to the construction site had been manufactured in its Quebec, Canada facility, not in Orange, Massachusetts. The Town had been assured by the manufacturer in March of 2010 that the sluice gates would be made in the Orange, Massachusetts manufacturing facility. The manufacturer is aware of the scheduling implications and has offered to provide the sluice gates at no cost, other than for freight and field service charges. The Town, which could not reasonably foresee the need for a waiver to the Buy American provision of the ARRA, submitted a waiver request immediately (July 9th, 2010) after they were informed by the manufacturer of the delivery oversight.

Re-ordering the gates and having them manufactured in the Massachusetts facility would delay the upgrade work to the final clarifiers by at least three months. Unfortunately, the existing final clarifier equipment has already failed, and since existing wastewater flows at the wastewater treatment plant are currently at seasonal lows, the most opportune time to install the new sluice gates would be during the July and August time frame.

Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay or require the substantial redesign of projects that are "shovel ready," such as this project at the Bristol, Rhode Island Wastewater Treatment Plant. The implementation of the ARRA Buy American requirements in this case would result in additional cost for this project and unreasonable delay in its completion. Such delay would also directly conflict with a fundamental economic purpose of ARRA, which is to create or retain jobs. More importantly, the imposition of the Buy American requirement would result in additional risk to water quality protection.

The Municipal Assistance Unit (CMU) has reviewed this waiver request and has determined that the supporting documentation provided by the Town's design engineer established a proper basis to specify that using the domestic manufactured good would be inconsistent with the public interest of the Town of Bristol, Rhode Island. The information provided is sufficient to meet the following criteria listed under Section 1605(b)(1) of the ARRA and in the April 28, 2009 Memorandum: Applying these requirements would be inconsistent with the public interest.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the temporary authority to issue exceptions to Section 1605 of the ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients.

Having established both a proper basis to specify the particular good required for this project and that using a domestically available alternative manufactured good would be inconsistent with the public interest, the Town of Bristol, Rhode Island is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5. This waiver permits use of ARRA funds for the installation and utilization of foreign manufactured influent and effluent sluice gates as documented in the Town's waiver request submittal dated July 9, 2010. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

Authority: Pub. L. 111–5, section 1605.

Dated: September 15, 2010.

Ira W. Leighton,

Acting Regional Administrator, EPA Region 1—New England.

[FR Doc. 2010–23968 Filed 9–23–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9206–3]

Notice of a Regional Project Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of Lowell, MA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(1) [inconsistent with the public interest] to the City of Lowell, Massachusetts (City) for the purchase of a foreign manufactured 30-inch diameter pipe tee fitting for a finished water pipe at the Lowell Water Treatment Facility. This is a project-specific waiver and only applies to the use of the specified product for the ARRA project being proposed. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project-specific circumstances. The proposed work involved repairing an existing 30-inch cement lined ductile iron fitting on a finished water line in the Lowell Water Treatment Facility. Based upon information submitted by the City's consulting engineer, EPA has concluded that, under the given circumstances (*i.e.* emergency standby situation, the need to minimize disruption in water transmission service), requiring the installation of an alternative domestic manufactured pipe fitting would be inconsistent with the public interest, and that a waiver of the Buy American provisions is justified. The Regional Administrator is making this determination based on the review and recommendations of the Municipal Assistance Unit. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to the requirements of Section 1605(a) of ARRA. This action allows the purchase and installation of the foreign manufactured 30-inch pipe fitting media, as specified in its June 18, 2010 request.

DATES: *Effective Date:* September 15, 2010.

FOR FURTHER INFORMATION CONTACT: Katie Connors, Environmental Engineer, (617) 918–1658, or, David Chin, Environmental Engineer, (617) 918–1764, Municipal Assistance Unit (CMU), Office of Ecosystem Protection (OEP), U.S. EPA, 5 Post Office Square, Suite 100, Boston, MA 02109–3912.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111–5, Buy American requirements, to the City of Lowell, Massachusetts for the purchase of a non-domestic 30-inch diameter pipe fitting for a finished water pipe at the Lowell Water Treatment Facility. EPA has evaluated the City's basis for procuring a 30-inch diameter pipe fitting from China at a cost of $4,000. Based on the information provided by the City's design engineer, EPA has determined that it is inconsistent with the public interest for the City to have pursued the purchase of a domestically manufactured 30-inch diameter pipe fitting under the specific circumstances encountered by the City.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or a public works project unless all of the iron, steel, and manufactured goods used in the project is produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here the EPA. A waiver may be provided under Section 1605(b) if EPA determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

When a recipient or sub-recipient has used foreign iron, steel, and/or manufactured goods for an ARRA project without authorization, as is the case here, OMB's regulation at 2 CFR 176.130 directs EPA to take appropriate action, which may include processing a determination concerning the inapplicability of Section 1605 of ARRA in accordance with 2 CFR 176.120. Consistent with the direction of 2 CFR 176.120, EPA will generally consider a waiver request made after obligating ARRA funds for a project to be a "late" request. However, in this case EPA has determined that the City's request, though made after the date the contract was signed and after use of the foreign pipe fitting, can be evaluated as timely because the City could not reasonably have foreseen the need for such a determination until after initiating the work. Accordingly, EPA will evaluate the request as if it were timely.

The City is requesting a waiver of the Buy American provision for a 30-inch diameter pipe fitting that was manufactured in China which replaced an existing 30-inch diameter cement lined ductile iron fitting on a finished water line at the Lowell Water Treatment facility. According to the City's design engineer, the existing 30-inch diameter pipe fitting had been leaking for some time at the threaded connection with a 2-inch air release valve. The original intent of the City was to remove the air release valve, clean the threads, perform the necessary repairs, and re-install the existing 30-inch fitting. However, in the event of a possible break in the pipe delivery system or if the existing fitting failed during the repair work, a new 30-inch diameter pipe fitting had to be on-site on an emergency standby basis. As a result, the City explored having a 30-inch diameter pipe fitting on-site before they could start any additional repair work.

During the week of May 3rd, 2010, the City was informed by three suppliers/vendors that a 30-inch diameter domestic pipe fitting would not be available on an emergency standby basis unless the City purchased it outright. Based on information provided by the City's consulting engineer, due to the large size of the fitting, vendors would only make their imported 30-inch tee pipe fittings available on standby status, but not their domestic pipe fittings. As a result, no domestic-made fittings of that size were available for stand-by in an emergency situation that would meet technical specifications. The City could not find a supplier/vendor that would promise right of first refusal on a domestic manufactured pipe fitting without purchasing it in full. None of the available vendors would allow the City the opportunity to return a 30-inch diameter domestic pipe fitting, if the City had decided on not installing it.

The City decided to order a 30-inch diameter foreign manufactured pipe fitting (made in China at a cost to the City of Lowell of $4,000) to have it available on an emergency standby basis to minimize plant shutdown and any disruption of water service delivery, in the event total replacement became necessary or if the pipe delivery system failed. The City had planned to repair and re-install the existing pipe fitting, but once the repair work had begun, it was determined that complete replacement was the proper approach to take. During the week of June 14th, the new foreign manufactured 30-inch diameter pipe fitting was installed. Fortunately, and more importantly, no disruption of water transmission service took place due to proper planning. The City then made the request to the EPA for a waiver on June 18, 2010, immediately after the emergency replacement work took place and it could not reasonably foresee the need for such a determination until after initiating the repair work and determining that a complete replacement of the pipe fitting was the proper course of action.

Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay or require the substantial redesign of projects that are "shovel ready," such as this project at the Lowell Water Treatment Plant. The imposition of ARRA Buy American requirements in this case would have likely resulted in unreasonable additional cost for this project and delay in its completion. Such delay would also directly conflict with a fundamental economic purpose of ARRA, which is to create or retain jobs. More importantly, the imposition could have resulted in a risk to public health had water service been interrupted for any extended period of time.

The Municipal Assistance Unit (CMU) has reviewed this waiver request and has determined that the supporting documentation provided by the City's design engineer established a proper basis to specify that using the domestic manufactured good would be inconsistent with the public interest of the City of Lowell. The information provided is sufficient to meet the following criteria listed under Section 1605(b)(1) of the ARRA and in the April 28, 2009 Memorandum: Applying these requirements would be inconsistent with the public interest.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the temporary authority to issue exceptions to Section 1605 of the ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients.

Having established both a proper basis to specify the particular good required for this project and that using a domestically available alternative manufactured good would be inconsistent with the public interest, the City of Lowell, Massachusetts is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5. This waiver permits use of ARRA funds for the purchase of a foreign manufactured 30-inch diameter pipe fitting documented in the City's waiver request submittal dated June 18, 2010. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

Authority: Public Law 111–5, section 1605.

Dated: September 15, 2010.

Ira W. Leighton,

Acting Regional Administrator, EPA Region 1—New England.

[FR Doc. 2010–23988 Filed 9–23–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9205–5]

Science Advisory Board Staff Office Request for Nominations of Experts for the Review of Great Lakes Restoration Initiative Action Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office is requesting public nominations for technical experts to form an SAB panel to review the interagency Great Lakes Restoration Initiative (GLRI) Action Plan which describes restoration priorities, goals, objectives, measurable ecological targets, and specific actions.

DATES: Nominations should be submitted by October 15, 2010 per instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Notice and Request for Nominations may contact Ms. Iris Goodman, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564–2164, by fax at (202) 565–2098, or via e-mail at *goodman.iris@epa.gov.* General information concerning the EPA Science Advisory Board can be found at the EPA SAB Web site at *http//www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: The SAB (42 U.S.C. 4365) is a chartered Federal Advisory Committee that provides independent scientific and technical peer review, advice, consultation, and recommendations to the EPA Administrator on the technical basis for EPA actions. As a Federal Advisory Committee, the SAB conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

EPA is leading an interagency Great Lakes Restoration Initiative (GLRI) to protect and restore the chemical, biological, and physical integrity of the Great Lakes. The GLRI is designed to target the most significant environmental problems in the region, as documented in extensive scientific studies and by stakeholder review. To guide the efforts of the GLRI, EPA and its Federal partners, through the Great Lakes Interagency Task Force, developed a comprehensive multi-year Action Plan. The GLRI Action Plan identifies outcome-oriented performance goals, objectives, measurable ecological targets, and specific actions for five major focus areas: toxic substances and areas of concern; invasive species; near-shore health and nonpoint source pollution; habitat and wildlife protection and restoration; and accountability, education, monitoring, evaluation, communication, and partnerships.

The EPA Great Lakes National Program Manager has requested the SAB to review the GLRI Action Plan to assess the appropriateness of its measures and actions to achieve its stated priorities and goals. The SAB Staff Office will form an expert panel to review the Plan and its targeted priorities.

Request for Nominations: The SAB Staff Office is seeking nominations of nationally and internationally recognized scientists and engineers with demonstrated expertise and research or management experience in one or more of the following areas: Limnology, landscape ecology, restoration ecology, ecotoxicology, population biology, aquatic biology, fisheries and wildlife management, invasive species, water chemistry, environmental engineering, environmental monitoring, and environmental assessment. We are particularly interested in scientists and engineers with direct experience in the design, management, and implementation of environmental protection and restoration programs that have included development of metrics and environmental indicators used to monitor, evaluate, and communicate restoration progress.

Availability of the review materials: The GLRI Action Plan is available on the Great Lakes National Program Office Web site *http://greatlakesrestoration.us/?page_id=24* and at the SAB Web site *http://yosemite.epa.gov/sab/sabpeople.nsf/WebCommittees/BOARD.* For questions concerning the GLRI, please contact Paul Horvatin, Chief, Monitoring Indicators and Reporting Branch, U.S. EPA Great Lakes National Program Office, 77 West Jackson Boulevard (G–17J), Chicago, Illinois 60604, phone (312) 353–3612; fax (312) 385–5456, or at *horvatin.paul@epa.gov.*

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals in the areas of expertise described above for possible service on this expert Panel. Nominations should be submitted in electronic format (which is preferred over hard copy) following the instructions for "Nominating Experts to Advisory Panels and Ad Hoc Committees Being Formed" provided on the SAB Web site. The instructions can be accessed through the "Nomination of Experts" link on the blue navigational bar on the SAB Web site at *http://www.epa.gov/sab.* To receive full consideration, nominations should include all of the information requested below.

EPA's SAB Staff Office requests contact information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's curriculum vita; sources of recent grant and/or contract support; and a biographical sketch of the nominee indicating current position, educational background, research activities, and recent service on other national advisory committees or national professional organizations.

Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB Web site, should contact Ms. Iris Goodman, DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than October 15, 2010. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

The EPA SAB Staff Office will acknowledge receipt of nominations. The names and bio-sketches of qualified nominees identified by respondents to this Federal Register notice, and additional experts identified by the SAB Staff, will be posted in a List of Candidates on the SAB Web site at *http://www.epa.gov/sab.* Public comments on this List of Candidates will be accepted for 21 calendar days. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office, a review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. In forming this expert panel, the SAB Staff Office will consider public comments on the List of Candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for Panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; and (e) skills working in committees, subcommittees and advisory panels; and, for the Panel as a whole, (f) diversity of expertise and viewpoints.

The SAB Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address *http://www.epa.gov/sab/pdf/epaform3110–48.pdf*.

The approved policy under which the EPA SAB Office selects subcommittees and review panels is described in the following document: *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board* (EPA–SAB–EC–02–010), which is posted on the SAB Web site at *http://www.epa.gov/sab/pdf/ec02010.pdf.*

Dated: September 17, 2010.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2010–23982 Filed 9–23–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

[month day, year].

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 23, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Benish Shah, Office of Managing Director, (202) 418–7866. For additional information, contact Benish Shah, OMD, 418–7866, benish.shah@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0384.

Title: Sections 64.901, 64.904 and 64.905, Auditor's Attestation and Certification.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit entities.

Number of Respondents and Responses: 1 respondent, 1 response.

Estimated Time per Response: 35–250 hours.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority is contained in Sections 1, 4, 201–205, 215, and 218–220 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154, 201–205, 215, and 218–220.

Frequency of Response: On–occasion, biennial, and annual reporting requirements.

Total Annual Burden: 255 hours.

Total Annual Cost: $1,200,000.

Privacy Act Impact Assessment: N/A.

Nature of Extent of Confidentiality: This collection does not address information of a confidential nature.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this comment period to obtain the three year clearance from them. There is no change to the reporting requirements. The Commission is reporting a 1,280 hourly burden reduction. This reduction is due to fewer respondents and therefore the total annual burden hours have been reduced.

Section 64.904(a) requires each incumbent LEC required to file a cost allocation manual is required to either have an attest engagement performed by an independent auditor every two years, covering the prior two year period, or have a financial audit performed by an independent auditor biennially. In either case, the initial engagement shall be performed in the calendar year after the carrier is first required to file a cost allocation manual. See Section 64.904(a)–(c). Instead of requiring mid–sized carriers to incur the expense of a biennial attestation engagement, they now file a certification with the Commission stating that they are in compliance with 47 CFR 64.901 of the Commission's rules. The certification must be signed, under oath, by an officer of the incumbent LEC, and filed with the Commission on an annual basis. Such certification of compliance represents a less costly means of enforcing compliance with our cost allocation rules. See 47 CFR 64.905 of the Commission's rules.

The requirements are imposed to ensure that the carriers are properly complying with Commission rules. They serve as an important aid in the Commission's monitoring program.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–23938 Filed 9–23–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 17, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the

respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 23, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information, contact Judith B. Herman, OMD, 202–418–0214 or email judith–b.herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0360.

Title: Section 80.409, Station Logs.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit, not–for–profit institutions, and state, local or tribal government.

Number of Respondents and Responses: 18,876 respondents, 18,876 responses.

Estimated Time Per Response: 27.3 – 95 hours.

Frequency of Response: Recordkeeping requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. sections 151 – 155, 301 – 609, 3 UST 3450, 3 UST 4726, 12 UST 2377.

Total Annual Burden: 533,458 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this comment period to obtain the three year clearance from them. There is no change to the recordkeeping requirement. However, there is a 41,050 hour decrease adjustment in burden which is due to 1,583 fewer respondents.

The recordkeeping requirements contained in Section 80.409 is necessary to document the operation and public correspondence service of public coast radiotelegraph, public coast radiotelephone stations and Alaska–public fixed stations, ship radiotelegraph, ship radiotelephone and applicable radiotelephone including the logging of distress and safety calls where applicable.

The recordkeeping requirements are in Section 80.409(c) – Public Coast Station Logs; Section 80.409(d) – Ship Radiotelegraph Logs and Section 80.409(e) – Ship Radiotelephone Logs.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–23944 Filed 9–23–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: September 20, 2010 .

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10287	Bank of Ellijay	Ellijay	GA	9/17/2010
10288	Bramble Savings Bank	Milford	OH	9/17/2010
10289	First Commerce Community Bank	Douglasville	GA	9/17/2010
10290	ISN Bank	Cherry Hill	NJ	9/17/2010
10291	Maritime Savings Bank	West Allis	WI	9/17/2010
10292	The Peoples Bank	Winder	GA	9/17/2010

[FR Doc. 2010–23905 Filed 9–23–10; 8:45 am]

BILLING CODEP

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Issuance of Exposure Draft of a Concepts Statement on Measurement of the Elements of Accrual-Basis Financial Statements in Periods After Initial Recording

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in April, 2004, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued an Exposure Draft of a Concepts Statement on Measurement of the Elements of Accrual-Basis Financial Statements in Periods After Initial Recording.

The Exposure Draft is available on the FASAB home page *http://www.fasab.gov/exposure.html.* Copies can be obtained by contacting FASAB at (202) 512–7350.

Respondents are encouraged to comment on any part of the exposure draft. Written comments are requested by November 30, 2010, and should be sent to: Wendy M. Payne, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW, Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Wendy Payne, Executive Director, at (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: September 21, 2010.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. 2010–24047 Filed 9–23–10; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 21, 2010.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Cendera Holdings, Inc., Fort Worth, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First Bells Bankshares, Inc., and thereby indirectly acquire voting shares of The First National Bank of Bells/Savoy, both of Bells, Texas.

In connection with this application, Applicant also has applied to acquire Cendera Funding, Inc., Fort Worth, Texas, and thereby engage in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, September 21, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–23928 Filed 9–23–10; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0168; Docket 2010–0083; Sequence 20]

Federal Acquisition Regulation; Information Collection; American Recovery and Reinvestment Act-Reporting Requirements—One-Time Reporting, Compensation Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0168).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation Regulatory Secretariat, will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning the American Recovery and Reinvestment Act-Reporting Requirements—One Time-Reporting, Compensation Requirements.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 23, 2010.

ADDRESSES: Submit comments identified by Information Collection 9000–0168 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting “Information Collection 9000–0168” under the heading “Enter Keyword or ID” and selecting “Search”. Select the link “Submit a Comment” that corresponds with “Information

Collection 9000–0168.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “Information Collection 9000–0168” on your attached document.

• *Fax:* 202–501–4068.

• *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405. ATTN: Hada Flowers/IC 9000–0168.

Instructions: Please submit comments only and cite Information Collection 9000–0168, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, Contract Policy Branch, at telephone (202) 501–3775 or via e-mail to *ernest.woodson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Regulation (FAR) subpart 4.15, and clause 52.204–11 requires contractors to report on use of Recovery Act funds. Contracting officers must include the new clause in solicitations and contracts funded in whole or in part with Recovery Act funds, except classified solicitations and contracts. Commercial item contracts and Commercially Available Off-The-Shelf (COTS) item contracts will be covered, as well as actions under the simplified action threshold.

One-Time Reporting, Compensation Requirements. A one-time reporting element for which the burden is imposed on certain prime contractors and first-tier subcontractors to publicly disclose the names and total compensation of each of the contractor’s or first-tier subcontractor’s five most highly compensated officers, for the calendar year in which the award was made.

While Section 1512(c)(4) of the Recovery Act requires reporting on all FFATA data elements, including the compensation information, it limits the prime’s reporting responsibility to first tier subcontractors that meet the applicability requirements. The FAR clause requires this compensation disclosure for prime contractors as well because to exclude prime contractors while requiring disclosure for first-tier subcontractors would be unsupportable given the transparency goals of both FFATA and the Recovery Act. There are likely to be some prime contractors that already provide public access to the compensation of senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of the Internal Revenue Code of 1986. For purposes of this analysis, the Government estimates that 5 percent of prime contractors already provide such public access. There are also likely to be some first-tier subcontractors that do not meet either of the revenue thresholds for applicability. For purposes of this analysis, the Government estimates that 5 percent of first-tier subcontractors will not have to disclose compensation information because they do not meet the revenue thresholds.

B. Annual Reporting Burden

Respondents: 76,049.
Responses Per Respondent: 1.25.
Total Annual Reponses: 95,061.
Hours Per Response: 3.
Total Burden Hours: 285,183.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0168, American Recovery and Reinvestment Act-Reporting Requirements—One-Time Reporting, Compensation Requirements, in all correspondence.

Dated: September 17, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

[FR Doc. 2010–23881 Filed 9–23–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0169; Docket 2010–0083; Sequence 21]

Federal Acquisition Regulation; Information Collection; American Recovery and Reinvestment Act-Reporting Requirements—Quarterly Reporting for Prime Contractors

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0169).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation Regulatory Secretariat, will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning the American Recovery and Reinvestment Act—Quarterly Reporting for Prime Contractors.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 23, 2010.

ADDRESSES: Submit comments identified by Information Collection 9000–0169 by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting “Information Collection 9000–0169” under the heading “Enter Keyword or ID” and selecting “Search”. Select the link “Submit a Comment” that corresponds with “Information Collection 9000–0169”. Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “Information Collection 9000–0169” on your attached document.

• *Fax:* 202–501–4068.

• *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405. ATTN: Hada Flowers/IC 9000–0169.

Instructions: Please submit comments only and cite Information Collection 9000–0169, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, Contract Policy Branch, at telephone (202) 501–3775 or via e-mail to *ernest.woodson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Quarterly Reporting for Prime Contractors. Elements updated quarterly for which the burden is imposed by the FAR requirements on the prime contractor include the following:

a. The amount of Recovery Act funds invoiced by the contractor, cumulative since the beginning of the contract ((d)(2));

b. A list of all significant services performed or supplies delivered, including construction, for which the contractor has invoiced ((d)(3));

c. An assessment of the contractor's progress towards the completion of the overall purpose and expected outcomes or results of the contract (*i.e.,* not started, less than 50 percent completed, completed 50 percent or more, or fully completed). This covers the contract (or portion thereof) funded by the Recovery Act ((d)(6));

d. A narrative description of the employment impact of the Recovery Act funded work ((d)(7)(i) through (ii)); and

e. For subcontracts valued at less than $25,000 or any subcontracts awarded to an individual, or subcontracts awarded to a subcontractor that in the previous tax year had gross income under ($300,000, the contractor shall only report the aggregate number of such first tier subcontracts awarded in the quarter and their aggregate total dollar amount ((d)(9)).

B. Annual Reporting Burden

Respondents: 20,013.

Responses per Respondent: 1.25.

Total Annual Reponses: 25,016.

Hours per Response: 4.

Total Burden Hours: 100,065.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0169, American Recovery and Reinvestment Act-Reporting Requirements—Quarterly Reporting for Prime Contractors, in all correspondence.

Dated: September 17, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

[FR Doc. 2010–23880 Filed 9–23–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0166; Docket 2010–0083; Sequence 18]

Federal Acquisition Regulation; Information Collection; American Recovery and Reinvestment Act-Reporting Requirements—One Time Reporting Requirements for Prime Contractors

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0166).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation Regulatory Secretariat, will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning the American Recovery and Reinvestment Act-Reporting Requirements—One Time Reporting Requirements for Prime Contractors.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 23, 2010.

ADDRESSES: Submit comments identified by Information Collection 9000–0166 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "Information Collection 9000–0166" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0166". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0166" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405. ATTN: Hada Flowers/IC 9000–0166.

Instructions: Please submit comments only and cite Information Collection 9000–0166, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, Contract Policy Branch, at telephone (202) 501–3775 or via e-mail to *ernest.woodson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Regulation (FAR) subpart 4.15, and clause, 52.204–11 requires contractors to report on use of Recovery Act funds. Contracting officers must include the new clause in solicitations and contracts funded in whole or in part with Recovery Act funds, except classified solicitations and contracts. Commercial item contracts and Commercially Available Off-The-Shelf (COTS) item contracts will be covered, as well as actions under the simplified action threshold.

One reporting elements for which the burden is imposed on the prime contractor under the FAR requirements include the following:

a. The award number for both its Government contract and first-tier subcontracts ((d)(1) and (d)(10)(viii));

b. Program or project title, if any, for its Government contract ((d)(4));

c. A description of the overall purpose and expected outcomes or results of the contract and first-tier subcontracts, including significant deliverables and, if appropriate, units of measure ((d)(5) and (d)(10)(vii));

d. Name of the first-tier subcontractor ((d)(10)(ii));

e. Amount of the first-tier subcontract award ((d)(10)(iii));

f. Date of the first-tier subcontract award ((d)(10)(iv));

g. Applicable North American Industry Classification System (NAICS) code ((d)(10)(v)); and

h. Funding agency ((d)(10)(vi)).

B. Annual Reporting Burden

Respondents: 20,013.

Responses per Respondent: 1.25.
Total Annual Reponses: 25,016.
Hours per Response: .6.
Total Burden Hours: 15,010.
Obtaining copies of proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0166, American Recovery and Reinvestment Act—Reporting Requirements—One Time Reporting Requirements for Prime Contractors, in all correspondence.

Dated: September 17, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

[FR Doc. 2010–23879 Filed 9–23–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0167; Docket 2010–0083; Sequence 19]

Federal Acquisition Regulation; Information Collection; American Recovery and Reinvestment Act-Reporting Requirements—One-Time Reporting for First-Tier Subcontractors

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0167).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning the American Recovery and Reinvestment Act-Reporting Requirements—One-Time Reporting for First-Tier Subcontractors.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 23, 2010.

ADDRESSES: Submit comments identified by Information Collection 9000–0167 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "Information Collection 9000–0167" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0167". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0167" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405. ATTN: Hada Flowers/IC 9000–0167.

Instructions: Please submit comments only and cite Information Collection 9000–0167, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, Contract Policy Branch, at telephone (202) 501–3775 or via e-mail to *ernest.woodson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Regulation (FAR) subpart 4.15, and clause 52.204–11 requires contractors to report on use of Recovery Act funds. Contracting officers must include the new clause in solicitations and contracts funded in whole or in part with Recovery Act funds, except classified solicitations and contracts. Commercial item contracts and Commercially Available Off-The-Shelf (COTS) item contracts will be covered, as well as actions under the simplified action threshold.

One-time reporting elements for which the burden is imposed only on the first-tier subcontractor under the FAR requirements include the following:

a. Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company((d)(10)(i));

b. Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable ((d)(10)(ix)); and

c. Subcontract primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable ((d)(10)(x)).

B. Annual Reporting Burden

Respondents: 60,039.
Responses Per Respondent: 1.25.
Total Annual Reponses: 75,049.
Hours Per Response: .25.
Total Burden Hours: 18,762.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0167, American Recovery and Reinvestment Act-Reporting Requirements—One-Time Reporting for First-Tier Subcontractors, in all correspondence.

Dated: September 17, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

[FR Doc. 2010–23878 Filed 9–23–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Decision To Evaluate a Petition To Designate a Class of Employees From the Vitro Manufacturing Facility in Canonsburg, PA, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees from the Vitro Manufacturing facility in Canonsburg, Pennsylvania, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Vitro Manufacturing.

Location: Canonsburg, Pennsylvania.

Job Titles and/or Job Duties: All employees who worked in any area.

Period of Employment: January 1, 1958 through April 30, 1960.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–24011 Filed 9–23–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–10–0527]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Human Exposure to Cyanobacterial Toxins in Water (OMB No. 0920–0527 exp. 2/28/2011)—Revision—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Cyanobacteria (also called blue-green algae) can be found in terrestrial, fresh, brackish, or marine water environments. Some species of cyanobacteria produce toxins that may cause acute or chronic illnesses (including neurotoxicity, hepatotoxicity, and skin irritation) in humans and animals (including other mammals, fish, and birds). A number of human health effects, including gastroenteritis, respiratory effects, skin irritations, allergic responses, and liver damage, are associated with the ingestion of or contact with water containing cyanobacterial blooms. Although the balance of evidence, in conjunction with data from laboratory animal research, suggests that cyanobacterial toxins are responsible for a range of human health effects, there have been few epidemiologic studies of this association.

In the first study of recreational microcystin (MC) exposure at a small lake, 104 study participants from lake visitors planning recreational activities that would generate aerosols were recruited, such as boating and using personal watercraft. During data collection for that study, MC concentrations within the bloom lake water were very low (<2–5 μg/L). Study participants' plasma MC concentrations were all below the limit of detection (0.147 μg/L) for the enzyme-linked immunosorbent assay (ELISA). The second study of recreational exposure to microcystins involved 81 children and adults planning recreational activities on one of three California reservoirs, two with significant, ongoing blooms of toxin-producing cyanobacteria, including *Microcystis aeruginosa* (bloom lakes) and one without a toxin-producing algal bloom (control lake). Highly variable microcystin concentrations were found in bloom lakes (<10 μg/L to > 500 μg/L); microcystin was not detected in control lake samples. Neither adenoviruses nor enteroviruses were detected in any of the lakes. Low microcystin concentrations were found in personal air samples (< 0.1 ng/m^3 [limit of detection]—2.89 ng/m^3) and nasal swabs (< 0.1 ng [limit of detection]—5 ng). Microcystin concentrations in the water-soluble fraction of all plasma samples were below the limit of detection (1.0 μg/L). Findings indicate that recreational activities in waterbodies experiencing toxin-producing cyanobacterial blooms can generate aerosolized cyanotoxins, making inhalation a potential route of exposure.

Based on earlier work, it seems unlikely that recreational exposure to cyanobacteria toxins during algal blooms on small lakes will cause acute illness in people. However, there are occupational circumstances, such as using stagnant ponds to irrigate landscapes or golf courses and growing and harvesting catfish in standing ambient water ponds, where exposure to these toxins is likely to be greater than what have been observed during recreational activities. It is possible that these workers may be exposed to biologically relevant concentrations of cyanobacterial toxins while performing job-related activities. To address this concern, this proposal is to assess exposure of catfish farm workers to cyanobacteria toxins occurring in the standing water of catfish ponds in Alabama. Dr. Alan Wilson of Auburn University will be a collaborator. Dr. Wilson has considerable experience working with the catfish farmers to address how the presence of cyanobacteria in pond water can impact the taste and odor of catfish offered for sale to commercial markets. Since most of the ponds of interest tend to develop HABs comprising *Microcystis aeruginosa,* this study will be limited to exposure to microcystins.

The purpose of the new data collection is to continue assessing the public health impact of exposure to the cyanobacterial toxins, microcystins. The extent of human exposure to microcystins present in catfish pond waters and associated aerosols and whether serum levels of microcystins can be used as a biomarker of exposure will be examined.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Catfish farm workers	Screening Questionnaire	60	1	5/60	5
	Pre-exposure Questionnaire	50	1	10/60	8
	Post-exposure Questionnaire	50	4	10/60	33
Total					46

Dated: September 20, 2010.

Thelma E. Sims,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–24021 Filed 9–23–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Voluntary Customer Satisfaction Surveys To Implement Executive Order 12862 in the Substance Abuse and Mental Health Services Administration (SAMHSA)—(OMB No. 0930–0197)—Extension

Executive Order 12862 directs agencies that "provide significant services directly to the public" to "survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services." SAMHSA provides significant services directly to the public, including treatment providers and State substance abuse and mental health agencies, through a range of mechanisms, including publications, training, meetings, technical assistance and Web sites. Many of these services are focused on information dissemination activities. The purpose of this submission is to extend the existing generic approval for such surveys.

The primary use for information gathered is to identify strengths and weaknesses in current service provisions by SAMHSA and to make improvements that are practical and feasible. Several of the customer satisfaction surveys expected to be implemented under this approval will provide data for measurement of program effectiveness under the Government Performance and Results Act (GPRA). Information from these customer surveys will be used to plan and redirect resources and efforts to improve or maintain a high quality of service to health care providers and members of the public. Focus groups may be used to develop the survey questionnaire in some instances.

The estimated annual hour burden is as follows:

Type of data collection	Number of respondents	Responses/ respondent	Hours/ response	Total hours
Focus groups	250	1	2.50	625
Self-administered, mail, telephone and e-mail surveys	89,750	1	.250	22,438
Total	90,000			23,063

Written comments and recommendations concerning the proposed information collection should be sent by October 25, 2010 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–7285.

Dated: September 16, 2010.

Elaine Parry,

Director, Office of Management, Technology and Operations.

[FR Doc. 2010–23932 Filed 9–23–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the Agency; (b) the accuracy of the

Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Ryan White HIV/AIDS Treatment Modernization Act of 2006: Data Report Form: (OMB No. 0915–0253)—Extension

The Ryan White HIV/AIDS Program Annual Data Report (or the Ryan White Data Report, formerly called the CARE Act Data Report [CADR]) was initially created in 1999 by HRSA's HIV/AIDS Bureau. Grantees and their subcontracted service providers who are funded under Parts A, B, C, and D, and the Part F Minority AIDS Initiative of Title XXVI of the Public Health Service Act (the Ryan White HIV/AIDS Program), submit the report, which has been revised to more closely resemble the data requested in the client-level data collection instrument that these grantees and providers are now also required to submit. All parts of the Ryan White HIV/AIDS Program specify HRSA's responsibilities in the administration of grant funds, the allocation of funds, the evaluation of programs for the population served, and the improvement of the quantity and quality of care. Because client-level data reporting requirements are relatively new for the Ryan White HIV/AIDS Program grantees, the grantees are still required to report aggregate data in the Ryan White Data Report to HRSA annually. The more mature aggregate reporting requirements provide accurate records of the providers receiving Ryan White HIV/AIDS Program funding, the services provided, and the clients served, which continue to be critical to the implementation of the legislation and necessary for HRSA to fulfill its responsibilities. The Ryan White Data Report has seven different sections containing information about the service providers; demographic information about the clients served; information about the type of core and support services provided and the number of clients served; information about counseling and testing services; clinical information about clients who received outpatient/ambulatory medical care; demographic tables for Parts C and D; and information about health insurance services.

The primary purposes of the Ryan White Data Report are to: (1) Characterize the organizations where clients receive services; (2) provide information on the number and characteristics of clients who receive Ryan White HIV/AIDS Program services; and (3) enable HAB to describe the type and amount of services a client receives. In addition to meeting the goal of accountability to Congress, clients, advocacy groups, and the general public, information collected in the Ryan White Data Report is critical for HRSA, State and local grantees, and individual providers to assess the status of existing HIV-related service delivery systems.

The response burden for grantees is estimated as:

Program under which grantee is funded	Number of respondents	Responses per grantee	Hours per hours	Total response burden
Part A	56	1	40	2,240
Part B	59	1	40	2,360
Part C	354	1	20	7,080
Part D	98	1	20	1,960
Subtotal	567			13,640

The response burden for service providers is estimated as:

Program under which provider is funded	Number of respondents	Responses per provider	Hours per hours	Total response burden
Part A Only	685	1	26	17,810
Part B Only	558	1	26	14,508
Part C Only	95	1	44	4,180
Part D Only	59	1	42	2,478
Funded under more than one program	683	1	50	34,150
Subtotal	2,080			73,126
Total for Both Grantees & Providers	2,647			86,766

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: September 20, 2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–23929 Filed 9–23–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–10–0215]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Application Form and Related Forms for the Operation of the National Death Index, (OMB No. 0920–0215, Expiration 12/31/2010)—Extension—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C.), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability of the population of the United States.

The National Death Index (NDI) is a national data base containing identifying death record information submitted annually to NCHS by all the state vital statistics offices, beginning with deaths in 1979. Searches against the NDI file provide the states and dates of death, and the death certificate numbers of deceased study subjects.

Using the NDI Plus service, researchers have the option of also receiving cause of death information for deceased subjects, thus reducing the need to request copies of death certificates from the states. The NDI Plus option currently provides the International Classification of Disease (ICD) codes for the underlying and multiple causes of death for the years 1979–2007. Health researchers must complete administrative forms in order to apply for NDI services, and submit records of study subjects for computer matching against the NDI file. A three-year clearance is requested. There is no cost to respondents except for their time. The total estimated annual burden hours are 182.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Health Researchers in Government, Universities, and Private Industry.	Application Form	50	1	2.5
Health Researchers in Government, Universities, and Private Industry.	Repeat Request Form	70	1	18/60
Health Researchers in Government, Universities, and Private Industry.	Data Transmittal Form	120	1	18/60

Dated: September 20, 2010.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–24017 Filed 9–23–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–0743]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Assessment and Monitoring of Breastfeeding-Related Maternity Care Practices in Intra-partum Care Facilities in the United States and Territories (OMB Control No. 0920–0743, Exp. 10/31/2010)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Substantial evidence demonstrates the health benefits of breastfeeding. Breastfeeding mothers have lower risks of breast and ovarian cancers and type 2 diabetes, and breastfeeding better protects infants against infections, chronic diseases like diabetes and obesity, and even childhood leukemia and sudden infant death syndrome (SIDS). However, the groups that are at higher risk for diabetes, obesity, and poor health overall persistently have the lowest breastfeeding rates. Public health priorities for the U.S. include increasing the overall rate of breastfeeding, and reducing variation in breastfeeding rates across population subgroups.

The health care system is one of the most important and effective settings to improve breastfeeding. In 2007, CDC conducted the first national survey of Maternity Practices in Infant Nutrition and Care (known as the mPINC Survey) in health care facilities (hospitals and free-standing childbirth centers) to provide baseline information. The survey was designed to provide baseline information and to be repeated again every two years. The second iteration of the survey was conducted in 2009. The survey inquired about patient education and support for breastfeeding throughout the maternity stay as well as staff training and maternity care policies. Each responding organization received a customized Benchmark Report as well as other feedback to use in self-assessment and quality improvement activities.

CDC proposes to repeat the mPINC in 2011 using previously fielded questions and methodology. In addition to all facilities that participated in 2007 or 2009, the 2011 survey will include those that were invited but did not participate in 2007 or 2009 and any that are new since then. All birth centers and hospitals with ≥1 registered maternity bed will be screened via a brief phone call to assess their eligibility, identify additional locations, and identify the appropriate point of contact.

A major goal of the 2011 survey is to be fully responsive to respondents' needs for information and technical assistance. CDC will again provide customized benchmark reports to respondents and document progress since 2009 on their quality improvement efforts. National and state reports will use de-identified data to describe incremental changes in practices and care processes over time at the facility, state, and national levels.

Participation in the survey is voluntary, and responses may be submitted by mail or through a web-based system. There are no costs to respondents other than their time. The total estimated annualized burden hours are 1,686.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Hospitals	Telephone Screening Interview for Hospitals.	3,897	1	5/60
	2011 mPINC Survey for Hospitals	2,568	1	30/60
Birth Centers	Telephone Screening Interview for Birth Centers.	192	1	5/60
	2011 mPINC Survey for Birth Centers	122	1	30/60

Dated: September 17, 2010.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–24016 Filed 9–23–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the Agency; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Health Center Controlled Networks Progress Reports (OMB No. 0915–0315)—Revision

The Health Resources and Services Administration (HRSA) collects network outcome measures, conducts evaluation of those measures, and has an electronic reporting system for the following types of grantees: Health Information Technology Planning Grants, Electronic Health Record Implementation Health Center Controlled Networks, Health Information Technology Innovations for Health Center Controlled Networks, and High Impact Electronic Health Records Implementation for Health Center Controlled Networks and Large Multi Site Health Centers. In order to help carry out its mission, HRSA created a set of performance measures that grantees use to evaluate the effectiveness of their service programs and monitor their progress through the use of performance reporting data.

Grantees report to HRSA on their grants to accomplish the following goals: increase access to needed data and services; improve quality, efficiency and effectiveness of network services; and enhance ability to track and monitor patient outcomes. Grantees submit their Progress Reports in a mid-year report and an accumulative annual progress report each fiscal year of the grant. These grants are on three year project periods. For HRSA grantees, there is no increase in burden. The hours per response has not changed. The number of grantees increased from 40 to 109.

The annual estimate of burden is as follows:

Application	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Planning	5	2	10	10	100
Electronic Health Records Implementation	54	2	108	18	1,944
Innovations Category 1	0	2	0	0	0
Innovations Category 2	29	2	58	18	1,044
High Impact	21	2	42	18	7,208
Total	109	-	80	-	3,808

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: September 16, 2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–23894 Filed 9–23–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Child Care and Development Fund Plan for States/Territories for FFY 2012–2013 (ACF–118).

OMB No.: 0970–0114.

Description: The Child Care and Development Fund (CCDF) Plan (the Plan) for States and Territories is required from each CCDF Lead agency in accordance with Section 658E of the Child Care and Development Block Grant Act of 1990, as amended (Pub. L. 101–508, Pub. L. 104–193, and 42 U.S.C. 9858). The implementing regulations for the statutorily required Plan are set forth at 45 CFR 98.10 through 98.18. The Plan, submitted on the ACF–118, is required biennially, and remains in effect for two years. The Plan provides ACF and the public with a description of, and assurance about, the States or the Territories child care program. The ACF–118 is currently approved through April 30, 2012, making it available to States and Territories needing to submit Plan Amendments through the end of the FY 2011 Plan Period. However, on July 1, 2011, States and Territories will be required to submit their FY 2012–2013 Plans for approval by September 30, 2011. Consistent with the statute and regulations, ACF requests extension of the ACF–118 with minor corrections and modifications. The Tribal Plan (ACF–118a) is not affected by this notice.

Respondents: State and Territorial CCDF Lead Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–118	56	0.50	162.50	4,550

Estimated Total Annual Burden Hours: 4,550.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: September 20, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–23889 Filed 9–23–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0250]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Premarket Approval of Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by October 25, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0231. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Premarket Approval of Medical Devices—21 CFR Part 814/Food and Drug Administration Modernization Act of 1997 (FDAMA) Sections 201, 202, 205, 208, and 209 (OMB Control Number 0910–0231)—Extension

Section 515 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e) sets forth the requirements for premarket approval of certain class III medical devices. Class III devices are either pre-amendments devices that have been classified into class III, or post-amendments devices which are not substantially equivalent to a pre-amendments device, or transitional devices. Class III devices are devices such as implants, life sustaining or life supporting devices, and/or devices which otherwise present a potentially unreasonable risk of illness or injury, and/or are of substantial importance in preventing impairment of human health. Most premarket approval applications (PMAs) are for post-amendments class III devices.

Under section 515 of the act, an application must contain certain specific information, including full reports of all information concerning investigations showing whether the device is reasonably safe and effective. The application should also include a statement of components, ingredients, and properties of the principles of operation for such a device. In addition, the application should also include a full description of the methods used in, and the facilities and controls used for the manufacture and processing of the device and labeling specimens. The implementing regulations, contained in part 814 (21 CFR part 814), further specifies the contents of a PMA for a class III medical device and the criteria FDA sets forth in approving, denying, or withdrawing approval of a PMA as well as supplements to PMAs. The purpose of this regulation is to establish an efficient and thorough procedure for FDA's review of PMAs and supplements to PMAs for certain class III (premarket approval) medical devices. The regulations under part 814 facilitate the approval of PMAs and supplements to PMAs for devices that have been shown to be reasonably safe and effective and otherwise meet the statutory criteria for approval. The regulations also ensure the disapproval of PMAs and supplements to PMAs for devices that have not been shown to be reasonably safe and effective and that do not otherwise meet the statutory criteria for approval. FDAMA (Public Law 105–115) was enacted on November 21, 1997, to implement revisions to the act by streamlining the process of bringing safe and effective drugs, medical devices, and other therapies to the U.S. market. Several provisions of this act affect the PMA process, such as section 515(d)(6) of the act. This section provided that PMA supplements were required for all device changes that affect safety and effectiveness of a device unless such changes are modifications to manufacturing procedures or method of manufacture. This type of manufacturing change now requires a 30-day notice, or where FDA finds such notice inadequate, a 135-day PMA supplement.

To make the PMA process more efficient, in the past several years FDA has done the following: (1) Made changes to the PMA program based on comments received, (2) complied with changes to the program mandated by FDAMA and the Medical Device User Fee Modernization Act, and (3) worked toward completion of its PMA reinvention efforts.

Respondents to this information collection are persons filing a PMA application or a PMA supplement with FDA for approval of certain class III medical devices. Part 814 defines a person as any individual, partnership, corporation, association, scientific or academic establishment, government agency or organizational unit, or other legal entity. These respondents include entities meeting the definition of manufacturers such as manufacturers of commercial medical devices in distribution prior to May 28, 1976 (the enactment date of the Medical Device Amendments). In addition, hospitals that reuse single use devices (SUDs) are also included in the definition of manufacturers. It is expected that FDA will receive one PMA application from hospitals that remanufacture SUDs annually. This figure has been included in table 1 of this document, as part of the reporting burden in § 814.20.

The industry-wide burden estimate for PMAs is based on an FDA actual average fiscal year (FY) annual rate of receipt of 36 PMA original applications, 532 PMA supplements, and 505 30-day notices using FY 2005 through 2009 data. The burden data for PMAs is based on data provided by manufacturers by device type and cost element in an earlier study. The specific burden elements for which FDA has data are as follows:

- Clinical investigations—67 percent of total burden estimate;
- Submission of additional data or information to FDA during a PMA review—12 percent;
- Additional device development cost (e.g., testing)—10 percent; and
- PMA and PMA supplement preparation and submissions, and development of manufacturing and controls data—11 percent.

Reporting Burden

The reporting burden can be broken out by certain sections of the PMA regulation as follows:

- *§ 814.15—Research Conducted Outside the United States*

Approximately 20 percent of the clinical studies submitted in support of a PMA application are conducted outside the United States. Each study should be performed in accordance with the "Declaration of Helsinki" or the laws and regulations of the country in which the study was conducted. If the study was conducted in accordance with the laws of the country, the PMA applicant is required to explain to FDA in detail the differences between the laws of the country and the "Declaration of Helsinki." Based on the number of PMAs received that contained studies from overseas, FDA estimates that the burden estimate necessary to meet this requirement is 20 hours.

- *Application in § 814.20(a) through (c) and (e)*

The majority of the 24,048 hourly burden estimate is due in part to this requirement. Included in this requirement are the conduct of laboratory and clinical trials as well as the analysis, review, and physical preparation of the PMA application. FDA estimates that 36 manufacturers, including hospital re-manufacturers of SUDs, will be affected by these requirements which are based on the actual average of FDA receipt of new PMA applications in FY 2005 through 2009. FDA's estimate of the hours per response (668) was derived through FDA's experience and consultation with industry and trade associations. In addition, FDA also based its estimate on the results of an earlier study which accounts for the bulk of the hourly burden for this requirement, which is identified by manufacturers.

- *§ 814.37—PMA Amendments and Resubmitted PMAs*

As part of the review process, FDA often requests the PMA applicant to submit additional information regarding the device necessary for FDA to file the PMA or to complete its review and make a final decision. The PMA applicant may, also on their own initiative, submit additional information to FDA during the review process. These amendments contain information ranging from additional test results, re-analysis of the original data set to revised device labeling. Almost all PMAs received by the Agency have amendments submitted during the review process. FDA estimates that 6,012 burden hours are necessary to satisfy this requirement.

- *PMA Supplements in § 814.39(a)*

FDA believes that the amendments mandated by FDAMA for § 814.39(f), permitting the submission of the 30-day notices in lieu of regular PMA supplements, will result in an approximate 20 percent reduction in the total number of hours as compared to regular PMA supplements. As a result, FDA estimates that 40,200 hours of burden are needed to complete the requirements for regular PMA supplements.

- *Special PMA Supplements—Changes Being Affected in § 814.39(d)*

These types of supplements are intended to enhance the safety of the device or the safe use of the device. The number of PMA supplements received that fit this category averaged 68 per year based on the numbers received from FY 2005 through FY 2009. Because of the minimal data required to be included in this type of supplement, FDA estimates that the burden hours necessary to satisfy this requirement are 408 hours.

- *30-Day Notice in § 814.39(f)*

Under section 515(d) of the act, modifications to manufacturing procedures or methods of manufacture that affect the safety and effectiveness of a device subject to an approved PMA do not require submission of a PMA supplement under § 814.39(a) and are eligible to be the subject of a 30-day notice. A 30-day notice shall describe in detail the change, summarize the data or information supporting the change, and state that the change has been made in accordance with the requirements of part 820 (21 CFR part 820). The manufacturer may distribute the device 30 days after the date on which FDA receives the 30-day notice, unless FDA notifies the applicant within 30 days from receipt of the notice, that it is not adequate. FDA estimates the burden to satisfy this requirement is 8,080 hours.

- *Post-Approval Requirements in § 814.82(a)(9)*

Post-approval requirements concern approved PMAs that were not reclassified and require a periodic report. After approval, all PMAs require a submission of an annual report. On average, approximately half of the submitted PMAs (18), require associated post-approval studies, i.e., followup of patients used in clinical trials to support the PMA or additional preclinical information, that is labor-intensive to compile and complete; the remaining PMAs require minimal information. Based on experience and consultation with industry, FDA has estimated that preparation of reports and information required by this section requires 2,430 hours.

- *Reports in § 814.84(b)*

Post-approval requirements described in § 814.82(a)(7) require submission of an annual report for each approved PMA. FDA estimates that respondents will average about 10 hours in preparing their reports to meet this requirement. This estimate is based on FDA's experience and consultation with industry. Thus, FDA estimates that the periodic reporting burden required by this section will take 6,480 hours.

Statutory Reporting Burden Estimate (FDAMA)

The total statutory reporting burden under the requirements of sections 201, 202, 205, 208, and 209 of FDAMA is estimated to be 1,230 hours. This burden estimate was based on actual real and estimated FDA data tracked from FY 2005 through FY 2009, and an estimate was also derived to forecast future expectations with regard to this statutory data.

Recordkeeping in § 814.82(a)(5) and (a)(6)

The recordkeeping burden under this section requires the maintenance of records, used to trace patients and the organization and the indexing of records into identifiable files to ensure the device's continued safety and effectiveness. These records are required only of those manufacturers who have an approved PMA and who had original clinical research in support of that PMA. For a typical year's submissions, 70 percent of the PMAs are eventually approved with 90 percent of these having original clinical trial data. Therefore, approximately 25 PMAs a year would be subject to these requirements. Also, because the requirements apply to all active PMAs, all holders of an active PMA application must maintain these records.

PMAs have been required since 1976, and there are 698 active PMAs that could be subject to these requirements, based on actual FDA data. Each study has approximately 200 subjects, and at an average of 5 minutes per subject, there is a total burden per study of 1,000 minutes, or 17 hours. The aggregate burden for all 698 holders of approved original PMAs, therefore, is 11,866 hours.

The applicant determines which records should be maintained during product development to document and/or substantiate the device's safety and effectiveness. Records required by the current good manufacturing practices for medical devices regulation (part 820) may be relevant to a PMA review and may be submitted as part of an application. In individual instances, records may be required as conditions of approval to ensure the device's continuing safety and effectiveness.

In the **Federal Register** of June 8, 2010 (75 FR 32476), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section/ FDAMA Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
814.15(b)	8	1	8	2	16
814.20	36	1	36	668	24,048
814.37(a) through (c) and (e)	36	1	36	167	6,012
814.39(a)	670	1	670	60	40,200
814.39(d)	68	1	68	6	408
814.39(f)	505	1	505	16	8,080

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section/ FDAMA Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
814.82(a)(9)	18	1	18	135	2,430
814.84(b)	648	1	648	10	6,480
Section 201 (FDAMA) Agreement Meeting	3	1	3	50	150
Section 202 (FDAMA) Expedited Review Request	5	1	5	10	50
Section 205 (FDAMA) Effectiveness Meeting	5	1	5	50	250
Section 208 (FDAMA) Classification Panel Meetings	20	1	20	30	600
Section 209 (FDAMA) 100-day meeting	28	1	28	10	280
Totals	2,050	13	2,050	1,214	89,004

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
814.82(a)(5) and (a)(6)	698	1	698	17	11,866

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: September 16, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–23912 Filed 9–23–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: ANA Consultant and Evaluator Qualifications Form.

OMB No.: 0970–0265.

Description: The ANA Consultant and Evaluator Qualifications Form is used to collect information from prospective proposal reviewers in compliance with 42 U.S.C. 2991d–1. The form allows the Commissioner of ANA to select qualified people to review grant applications for Social and Economic Development Strategies (SEDS), Native Language Preservation and Maintenance, and Environmental Regulatory Enhancement. The panel review process is a legislative mandate in the ANA grant funding process.

Respondents: Native Americans, Native Alaskans, Native Hawaiians and other Pacific Islanders.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ANA Consultant and Evaluator Qualifications Form	300	1	1	300

Estimated Total Annual Burden Hours: 300.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: September 21, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–23923 Filed 9–23–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Donor Management Research: Improvements in Clinical Management of Deceased Organ Donors

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Request for information.

SUMMARY: The Health Resources and Services Administration (HRSA), Division of Transplantation, is soliciting input, feedback, and suggestions from researchers and interested parties within the organ donation and transplant community regarding guidance for a possible grant or contract that focuses on improvements in clinical management of deceased organ donors.

Given the continued imbalance between the demand for and supply of deceased donor organs, it is essential that deceased donors be managed appropriately to optimize the number and function of donor organs. It is reasonable to expect that better clinical donor management would improve organ quality, organs transplanted per donor (OTPD), and post-transplant recipient outcomes.

DATES: Written or electronic comments must be received by HRSA by October 15, 2010.

ADDRESSES: Please send all written comments to James Bowman, MD Medical Director, Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Suite 12C–06, Rockville, Maryland 20857; Telephone (301) 443–4861 Fax (301) 594–6095; or e-mail: *jbowman@hrsa.gov.*

Docket: For access to the docket to view comments received, phone 301–443–7577 to schedule an appointment to view public comments.

FOR FURTHER INFORMATION CONTACT: James Bowman, MD, Medical Director at Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, at the contact information cited above.

SUPPLEMENTARY INFORMATION:

Background

Since 2002, HRSA has funded the Clinical Interventions to Increase Organ Procurement (CIOP) Grant Program, authorized by Public Health Service Act, as amended, Section 377A(b), (42 U.S.C. 274f–1). The CIOP Grant Program has provided support for the implementation and evaluation of highly promising strategies and approaches serving as model interventions for identifying appropriate organ donor candidates, evaluating donated organs, maintaining donor clinical stability and optimizing methods for organ procurement. Other than the fiscal year 2007 CIOP grant cycle, which focused on uncontrolled donation after circulatory death donors, the CIOP Program has not focused on specific research issues. Since the inception of the grant program, 19 grants have been awarded. While these grants have furthered knowledge regarding clinical management of donors, the studies have generally focused on specific organ systems and not on donor management approaches with the goal of optimizing all organ systems.

The CIOP Grant Program was not funded in Fiscal Year 2010 to allow HRSA to consider how to best utilize the limited Federal research funds available in a more useful and beneficial manner. There has been considerable discussion among critical care and transplant specialists regarding donor management. A Donor Management Task Force was convened in August 2010 to address relevant issues in donor management practices. This task force discussed: (1) Advancing the scientific knowledge that influences organ donor management practices; (2) promoting the adoption of critical care and quality improvement practices in each Donation Service area (DSA) that optimize organ viability and increase OTPD; (3) ensuring that all patients meeting the neurologic criteria for determination of death are pronounced in a timely manner so that organ donation intentions may be fully honored; and (4) ensuring that each donation case occurs using the most appropriate donation pathway: Either donation after neurologic determination of death or donation after cardiac determination of death. Although quality donor management may be assumed to improve transplantation outcomes, there are limited scientifically rigorous studies validating this assumption. The studies that do exist involve a limited number of DSAs. These studies do suggest an improvement in OTPD based on certain donor management practices, but further investigation is needed. Upon review of research possibilities being discussed in meetings and in the literature, HRSA believes that research should be directed to help establish evidence-based donor management protocols.

Therefore HRSA is considering funding through a grant or contract mechanism to one or two parties, a total of up to $1 million/year for three (3) years to conduct a multicenter, nationwide study focused on donor management and improvement in outcomes, particularly OTPD, organ quality, and post-transplant recipient outcomes.

Request for Comments

For this Request for Information, respondents are asked to present their experiences and opinions regarding the importance of further study into donor management and its outcomes. Suggestions and comments concerning specific areas of analysis are encouraged. Such studies might consider developing or refining a validated tool useful for predicting donor outcomes based upon appropriate and readily available donor data (*e.g.,* collected for purposes of OPTN data submission, or routinely collected by Organ Procurement Organizations). Donor management study designs that include OPTN data collected on most, if not all, deceased donor organs will be encouraged.

HRSA is seeking guidance from the community to help structure either a donor management study to be accomplished by contract or targeted research questions that will be incorporated into the CIOP FY 2011 request for application.

Dated: September 16, 2010.

Mary K. Wakefield,

Administrator.

[FR Doc. 2010–23893 Filed 9–23–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Phantasmidine, a Nicotinic Receptor Agonist for the Treatment of Addiction and Neurological Disorders

Description of Invention: The inventors have isolated and characterized an alkaloid, phantasmidine, from the skin of the Ecuadoran poison frog *E. anthonyi.* Phantasmidine is selective for β4-containing receptor subtypes, unlike many nicotinic receptor agonists currently in development, which target β2-containing receptor subtypes. This selectivity makes phantasmidine a unique pharmacological probe, as well as a promising lead compound for the development of selective therapeutics targeting β4-containing receptor subtypes, which appear to play any important role in nicotine addiction and other substance dependencies.

Nicotinic acetylcholine receptors (nAChRs) are broadly distributed in both the peripheral and central nervous systems; activation of brain nAChRs results in enhanced release of various key neurotransmitters. Dysfunction of these receptors is associated with a variety of neurological diseases, including nicotine addiction. Nicotinic agonists, which enhance action at nicotinic acetylcholine receptors, have been shown to possess potential clinical utility in many of these diseases, although development is hindered by the existence of a large number of nAChR subtypes with highly variable properties.

Alkaloids, such as epibatidine found in skin from the frog species *E. tricolor,* have been shown to activate nicotinic acetylcholine receptors. However, while epibatidine has been shown to be a powerful analgesic, it is also extremely toxic, so research has focused on the identification and development of less toxic analogs.

Applications

- Development of therapies for the treatment of addiction, including nicotine and alcohol addictions.
- Development of therapies for neurological diseases such as Alzheimer's disease, attention deficit hyperactivity disorder (ADHD), and schizophrenia.
- Development of selective pharmacological probes for bioimaging, binding assays, and functional assays of nicotinic receptors.

Inventors: Richard W. Fitch *et al.* (NIDDK)

Related Publication: R Fitch *et al.* Phantasmidine: An epibatidine congener from the Ecuadorian poison frog *Epipedobates anthonyi.* J Nat Prod. 2010 Mar 26;73(3):331–337. [PubMed: 20337496]

Patent Status: U.S. Provisional Application No. 61/315,674 filed 19 March 2010 (HHS Reference No. E–125–2010/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Tara Kirby, PhD; 301–435–4426; *tarak@mail.nih.gov.*

Transplant and Autoimmune Therapy Using T-Cells Expressing Programmed Death Ligand-1 (PD–L1)

Description of Invention: Transplant complications (graft rejection and graft-versus-host disease) and autoimmune diseases are primarily caused by T cell immune responses against normal host tissue or transplanted tissues. These disorders can lead to serious complications and may be chronic, debilitating, and fatal. Current treatment for these disorders is oftentimes not effective, and is typically associated with significant side effects, including global immune suppression, which increases the rate of infection and cancer. Hence, there is a need for new technologies to more specifically suppress the immune system for treatment of these diseases.

Programmed death (PD) ligand 1 (PD–L1) is an immune molecule present on regulatory T cells (Tregs), other suppressor cell populations, and tumor cells; the function of PD–L1 is to suppress the function of pathogenic T cells that express the PD1 receptor. Therefore, it has been hypothesized that the transfer of T cells that are enriched for PD–L1 expression might represent an effective method to suppress autoimmunity or transplant complications. Adoptive T cell therapy using Tregs is one such approach; however, this approach is limited due to the relative rarity of Tregs and their tendency to possess differentiation plasticity towards pathogenic T cell subsets such as the Th17 subset. Ex vivo co-stimulated and expanded effector T cells can be generated in sufficient numbers for cell therapy; however, such cells are not enriched for PD–L1 expression.

The current technology overcomes these limitations through transduction of co-stimulated T cells with a lentiviral expression vector that dictates T cell expression of PD–L1. In this method, the co-stimulated T cells acquire the immunosuppressant characteristics of Treg cells. The PD–L1 gene expression construct co-expresses a cell surface molecule (*i.e.,* CD19 or CD34) that allows enrichment of the gene-modified T cells to high purity. Also the construct co-expresses another gene, TMPK, which acts as a safety cell fate switch because the TMPK can specifically activate the cytotoxic prodrug, AZT. By incorporation of this TMPK/AZT cell fate safety switch, the current technology will allow for PD–L1 therapeutic delivery, with subsequent elimination of the therapeutic cells in the event of toxicity.

Applications: Co-stimulated T cells expressing the PD–L1, CD19–TMPK construct can be adoptively transferred into patients to: (1) Treat autoimmune diseases; (2) prevent graft-versus-host disease (GVHD), which remains the primary lethal complication after hematopoietic cell transplantation (HCT); and (3) prevent solid organ or HCT transplant rejection.

Advantages

(1) Relative to other proposed cell therapies such as Treg therapy, co-stimulated T cells expressing the gene construct can be manufactured in clinically relevant numbers, possess a defined mechanism of action, and can be specifically modulated (eliminated) in vivo.

(2) The proposed immuno-gene therapy would prove advantageous to current immune suppressive therapies, which cause many side effects.

Market

(1) Many diseases have been identified to represent autoimmune disorders, including but not limited to: inflammatory bowel disease (IBD; including Crohn's disease); multiple sclerosis (MS); systemic lupus erythematosis (SLE); rheumatoid arthritis; and immune-mediated (type-1) diabetes mellitus. Approximately 1 in every 31 people in the U.S. suffers from an autoimmune disease; women suffer disproportionately from autoimmune diseases as they represent about 75% of cases.

(2) Graft rejection can occur in the setting of solid organ transplantation (for example, pancreatic, renal, cardiac, and liver transplantation) and also occurs after hematopoietic stem cell or bone marrow transplantation (including matched sibling, unrelated donor, and cord blood transplantation). More than 19,000 transplants are performed each year in the United States and the prevalence of graft rejection is considerable in these transplant recipients. In addition to graft rejection, graft-versus-host disease (GVHD) represents a significant transplant complication. Acute GVHD can occur in all types of hematopoietic stem cell or bone marrow transplantation (matched related, unrelated, or cord blood) and ranges in incidence from 30–80%. Chronic disease can also occur in approximately 54–70% of hematopoietic stem cell transplant recipients.

Development Status: Early-stage development.

Inventors: Daniel H. Fowler and Shoba Amarnath (NCI).

Publication: Amarnath S, Costanzo CM, Mariotti J, Ullman JL, Telford WG, Kapoor V, Riley JL, Levine BL, June CH, Fong T, Warner NL, Fowler DH. Regulatory T cells and human myeloid dendritic cells promote tolerance via programmed death ligand-1. PLoS Biol. 2010 Feb 2;8(2):e1000302. [PubMed: 20126379].

Patent Status: U.S. Patent Application No. 61/261,081 filed 13 Nov 2009 (HHS Reference No. E–022–2010/0–US–01).

Related Technologies: HHS Reference No. E–058–2006.

Licensing Status: Available for licensing.

Licensing Contact: Surekha Vathyam, PhD; 301–435–4076; *Surekha.Vathyam@nih.gov.*

Collaborative Research Opportunity: The Center for Cancer Research, Experimental Transplantation and Immunology Branch, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

A New "Destination" for Protein Expression: A Lentiviral Gateway® Destination Vector for High-Level Protein Expression (pDEST–673)

Description of Invention: A laboratory at the Science Applications International Corporation in Frederick, MD (SAIC–Frederick) has developed a lentiviral vector, pDEST–673, for high protein expression yields in cells. The pDEST–673 vector combines three features that make it optimal for protein expression in lentiviruses: the pFUGW backbone, a Gateway® vector conversion cassette, and a neomycin antibiotic resistance marker. The pFUGW portion contains a highly potent polypurine tract (PPT) that allows for the production of higher viral titers within transfected cells and a woodchuck regulatory element (WRE) to enhance protein expression. The addition of the Gateway® conversion cassette converts the vector into a Destination vector and the neomycin resistance marker allows for researchers to select for stable transfectants using antibiotic selection (a feature not possessed by many lentiviral vectors). This lentiviral Destination vector should be useful for researchers desiring to utilize neomycin resistance to select for proteins expressed in cells stably transfected with lentiviruses.

Applications

- Research tool for high quantity production of a protein(s) of interest for studying the role of the protein(s) in a variety of biological processes, including pathologies such as cancers, infectious diseases, autoimmune diseases, and many other disorders.
- Research tool for selecting stable lentiviral transfectants following the insertion of the vector into tumor cells.
- Potential tool for enhancing production of proteins that are normally difficult to express in other types of bacterial, insect, or mammalian expression systems.

Advantages

- *The pFUGW backbone provides the pDEST–673 vector with optimal protein expression properties:* The polypurine tract (PPT) region in the vector allows for efficient viral transcription leading to increased lentiviral production in cells. The woodchuck regulatory element acts as a posttranscriptional enhancer to promote the conversion of more mRNA transcripts into protein to yield high-levels of the protein of interest. These elements are not found in most commercially available lentiviral vectors.
- *The incorporation of the neomycin resistance marker facilitates selection of the transfectants of interest:* Many laboratories rely on neomycin selection as a key selectable marker in their protein expression experiments. Few commercially available lentiviral vectors contain a neomycin resistance marker.

Inventors: Dominic Esposito (SAIC).

Selected Publications

1. A Ventura, *et al.* Cre-lox-regulated conditional RNA interference from transgenes. Proc. Natl. Acad. Sci. USA. 2004 Jul 13;101(28):10380–10385. [PubMed: 15240889].
2. C Lois, *et al.* Germline transmission and tissue-specific expression of transgenes delivered by lentiviral vectors. Science 2002 Feb 1;295(5556):868–872. [PubMed: 11786607].

Patent Status: HHS Reference No. E–119–2009/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing under a Biological Materials License Agreement.

Licensing Contact: Samuel E. Bish, PhD; 301–435–5282; *bishse@mail.nih.gov.*

A Hand Held Portable Device Based on Light Emitting Diodes (LEDs) as a Light Source for Use in the Detection of Counterfeit Pharmaceutical Drugs and Packaging

Purpose: The FDA is seeking a device company to commercialize its patent pending hand held portable device for the detection of counterfeited pharmaceuticals. The device will be based on the technology described below. The invention was further described and claimed in provisional patent application 61/165,395 filed March 31, 2009. The FDA scientists have built highly reliable prototypes of two different models of the device and demonstrated the validity of the device for multiple applications.

Description of Technology: A hand held portable device was designed and developed for use in the detection of counterfeit pharmaceutical products and packaging. The light source of the device emits different wavelengths of light onto a sample. The device incorporates the use of single wavelength light emitting diodes (LEDs) which generate intense single wavelengths of light. Two models of the device have been developed and manufactured. The first model incorporates only LEDs at specific wavelengths and the second model incorporates a camera and display along with the LEDs at specific wavelengths. The different LED wavelengths of light interact with the sample by either being absorbed, reflected or by generating an apparent color change in the sample. The absorption, reflection or apparent color change by the sample may be observed using different colored goggles (yellow, orange, red). The fluorescence profiles of suspect pills can be compared with the authentic article to determine legitimacy. The device can be used for field examination of suspect counterfeit pharmaceutical products, packaging and diverted pharmaceutical products. Due to its size, and the simplicity in design and use, the hand held portable LED light source can be used by health safety officials (e.g. FDA investigators), by law enforcement authorities, or by the pharmaceutical companies themselves, to rapidly screen samples for suspect counterfeit products improving the safety of that the U.S. drug distribution chain.

Applications

- Testing for authenticity of pharmaceutical products.
- Combating the ever growing problem of counterfeiting in pharmaceutical products to protect public safety.
- Traditional law enforcement activities.

Advantages: Current methods of detecting counterfeit pharmaceuticals include vibrational spectroscopy, x-ray diffraction, gas chromatography, liquid chromatography, and mass spectrometry. These methods although often effective, require expensive and bulky instrumentation, and are generally performed in a laboratory by highly trained operators. The LED devices based on the subject technology thus offer the following advantages:

- Small size, light and portable.
- Tests can be performed at desired location outside of lab setting.
- Simple to use and does not require special technical skills.
- Low cost and simple to manufacture.
- Reliable and provides reproducible results.
- Image capture and storage capabilities.

Development Status: Fully developed and ready for manufacturing.

Market: The volume of counterfeit pharmaceuticals entering the United States and other countries continues to increase. Counterfeit pharmaceuticals are illegally imported and are commonly available over the Internet. It is often difficult to determine the authenticity of a pharmaceutical, since the genuine and counterfeit products often have nearly identical appearance and markings (shape, color, size, packing, labeling *etc.*), even when viewed by professionals. Detection of counterfeit pharmaceuticals is of extreme importance since the efficacy of a counterfeit product is often lower than the actual product. In addition, the counterfeit product may contain toxic components, and result in side effects which are not associated with the authentic product. Such counterfeit products also result in monetary loss to pharmaceutical companies and retailers. It is for these reasons, *i.e.* health safety and economic loss, that the commercial potential of devices that detect such counterfeit products is large. Due to the advantages offered by the subject invention as outlined above, it is predicted that both models of subject device will enjoy commercial success. The ease of use allows for examination of products anywhere an investigator or inspector can travel and gives a preliminary result that would allow action to be taken. The device has the potential to be expanded to uses related to product tampering, counterterrorism and other traditional law enforcement applications.

Inventors: Nicola Ranieri (FDA) *et al.*

Patent Status

- U.S. Provisional Application No. 61/165,395 filed 31 Mar 2009, entitled "Device and Method for Detection of Counterfeit Pharmaceuticals" (HHS Reference No. E–206–2008/0–US–01).
- PCT Application No. PCT/US2010/029502 filed 31 Mar 2010 (HHS Reference No. E–206–2008/0–PCT–03).

Licensing Status: Available for licensing.

Licensing Contacts

- Uri Reichman, PhD, MBA; 301–435–4616; *UR7a@nih.gov.*
- Michael Shmilovich, Esq.; 301–435–5019; *shmilovm@mail.nih.gov.*

Methods for Treatment and Diagnosis of Psychiatric Disorders

Description of Invention: Current drugs used to treat schizophrenia block dopamine receptors. These drugs can effectively suppress the "positive" symptoms of schizophrenia but have little impact on the debilitating or "negative" symptoms of the disease which include social withdrawal, emotional unresponsiveness, difficulty with attention and memory, and apathy. There is thus a therapeutic need for improved antipsychotics that can improve both positive and negative symptoms. This technology describes novel interactions between neuregulins (NRGs), ErbB receptors, and dopamine signaling pathways that may influence the expression of schizophrenia. Researchers at the NIH demonstrated that NRGs reverse long term potentiation (LTP) when given shortly after LTP is established without affecting basal transmission. Blockade of ErbB receptors with antagonists prevented depotentiation by NRG, and NRG showed no effect in an ErbB–4 knockout mouse model. Thus NRG regulation of LTP occurs through the ErbB–4 receptor. Data also showed that dopamine antagonists block the effects of NRGs on LTP. These findings could be useful in the development of antipsychotic drugs that block NRG actions, and in doing so, provide better therapies for schizophrenia.

This technology describes methods of treating schizophrenia with an antagonist that blocks neuregulin-1 activation of the ErbB–4 receptor signaling pathway, methods of identifying schizophrenia in affected patients, as well as methods of identifying modulators of ErbB–4 receptor signaling. This technology may also be applicable for treating or preventing other psychiatric disorders such as bipolar disorder, attention deficit disorder (ADD), and autism.

Applications

- Method of diagnosis and treatment for schizophrenia, bipolar disease, ADD and autism.
- Methods of finding modulators of ErbB–4 receptor signaling.

Market

- The U.S. schizophrenia market averages 10 billion dollars a year.
- Schizophrenia affects approximately 1% of the population.

Inventors: Andres Buonanno (NICHD).

Publications

1. Kwon OB, Longart M, Vullhorst D, Hoffman DA, Buonanno A. Neuregulin-1 reverses long-term potentiation at CA1 hippocampal synapses. J Neurosci. 2005 Oct 12;25(41):9378–9383. [PubMed: 16221846].

2. Kwon OB, Paredes D, Gonzalez CM, Neddens J, Hernandez L, Vullhorst D, Buonanno A. Neuregulin-1 regulates LTP at CA1 hippocampal synapses through activation of dopamine D4 receptors. Proc Natl Acad Sci USA. 2008 Oct 7;105(40):15587–15592. [PubMed: 18832154].

3. Vullhorst D, Neddens J, Karavanova I, Tricoire L, Petralia RS, McBain CJ, Buonanno A. Selective expression of

ErbB4 in interneurons, but not pyramidal cells, of the rodent hippocampus. 2009 J Neurosci. Sep 30;29(39):12255–12264. [PubMed: 19793984].

4. Buonanno, A. The neuregulin signaling pathway and schizophrenia: From genes to synapses and neural circuits. Brain Res Bull. 2010 Aug 3; Epub ahead of print. [PubMed: 20688137].

Patent Status

• U.S. Provisional Application No. 60/837,449 filed 11 Aug 2006 (HHS Reference No. E–304–2005/0–US–01).

• International Application No. PCT/US07/75724 filed 10 Aug 2007, which published as WO 2008/019394 on 14 Feb 2008 (HHS Reference No. E–304–2005/0–PCT–02).

• U.S. Patent Application No. 12/377,025 filed 10 Feb 2009 (HHS Reference No. E–304–2005/0–US–03).

Licensing Status: Available for licensing.

Licensing Contact: Jeffrey Clark Klein, PhD; 301–594–4697; *kleinjc@mail.nih.gov.*

Collaborative Research Opportunity: The National Institutes of Child Health and Human Development, Section on Molecular Neurobiology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: September 20, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–23977 Filed 9–23–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Use of Adenosine Agonists To Prevent Arterial Vascular Calcification Disorder

Description of Invention: Scientists at the National Human Genome Research Institute (NHGRI) and the National Heart Lung and Blood Institute (NHLBI) at the National Institutes of Health (NIH) have discovered a genetic defect in the Ecto-5'-nucleotidase (*NT5E*) gene which results in Cluster of Differentiation 73 (CD73) deficiency that leads to a decrease in adenosine, and ultimately, an increase in vascular calcification. *NT5E* encodes CD73, an enzyme that converts adenosine monophosphate (AMP) to adenosine in the extracellular region of the vascular endothelium. Normally, extracellular adenosine binds to one of the several receptors on the surface decreasing the production of cyclic AMP (cAMP) resulting in an inhibition of vascular calcification.

The discovery of this genetic mutation leading to a decrease in adenosine provides a method of treating or preventing the disorder by using adenosine receptor agonists as therapeutic agents. Adenosine receptor agonists can be used to treat or prevent disorders associated with vascular and/or joint capsule calcification, including for example atherosclerosis, Monkeberg's medial sclerosis, CD74 deficiency, Ehlers Danlos syndrome (EDS), Marfan/Loewe Dietz syndrome, fibromuscular dysplasia, Kawasaki syndrome, pseudoxanthoma elasticum, and premature placental calcification.

Applications: Treatment for vascular calcification disorder by using adenosine receptor agonist agents.

Development Status: Early-stage.

Inventors: William A. Gahl (NHGRI), Thomas C. Markello (NHGRI), Shira G. Ziegler (NHGRI), Manfred Boehm (NHLBI), Cynthia Hillaire (NHLBI).

Publication: C St. Hilaire, et al. *NT5E* Mutations are Associated with Arterial Calcifications. New Engl J Med., Submitted 2010.

Patent Status: U.S. Provisional Application No. 61/319,336 filed 31 Mar 2010 (HHS Reference No. E–094–2010/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Steve Standley, 301–435–4074, *sstand@od.nih.gov.*

Collaborative Research Opportunity: The NHGRI is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize adenosine receptor agonist compounds for therapeutic use including as a treatment of certain common as well as rare vascular calcification-related disorders (see above Description of Invention). Please contact NHGRI Technology Development Coordinator Claire T. Driscoll at *cdriscol@mail.nih.gov* for more information.

Small Molecule Neuropeptide S Receptor (NPSR) Antagonists for the Treatment of Addictive Disorders, Mood, Anxiety and Sleep Disorders

Description of Invention: The inventors, who work for the National Human Genome Research Institute (NHGRI) and the National Institute on Alcohol Abuse and Alcoholism (NIAAA) at the National Institutes of Health (NIH), have developed NPSR antagonists that hold the potential for being clinically useful treatments for alcohol and drug addiction. Neuropsychiatric disorders including, for example, mood, anxiety, eating, and sleep related disorders, as well as alcoholism and drug addiction, are major causes of mortality and morbidity. Patient relapse into drug seeking and use, after an interval of sobriety, is a key component of the addictive syndrome, with approximately two-thirds of patients relapsing within three months of initiating abstinence. Therefore, relapse prevention is a major treatment objective.

Neuropeptide S (NPS), an endogenous ligand for the Neuropeptide S receptor (NPSR) has recently been shown to play a key role in relapse-like behavior. In addition, because mood, anxiety, eating, and sleep related behaviors are often closely linked with the addictive process, and are also affected by the NPS system, it is believed that the NPSR antagonist will also be promising as a useful therapeutic target in these clinical areas as well.

Applications: Development of a NPSR antagonist for the therapies of alcohol and drug addiction.

Development Status: Early-stage.

Market: More than 700,000 Americans receive alcoholism treatment on any given day by using the traditional alcoholism therapy based on clinical experience and intuition, with little rigorous validation of their effectiveness (*http://health.nih.gov/topic/Alcoholism/SubstanceAbuse*). About 18% of American adults have anxiety disorders (www.nimh.nih.gov). More than 40 million Americans suffer from chronic, long-term sleep disorders, and an additional 20 million report sleeping problems occasionally (*http://www.adaa.org*).

Inventors: Juan J. Marugan, Ke Liu, Samarjit Patnaik, Noel T. Southall, Wei Zheng (all with NHGRI); Markus Heilig (NIAAA).

Related Publication: N Cannella *et al.* Persistent increase of alcohol-seeking evoked by neuropeptide S: An effect mediated by the hypothalamic hypocretin system. Neuropsychopharmacology. 2009 Aug; 34(9): 2125–2134. [PubMed: 19322167].

Patent Status: U.S. Provisional Application No. 61/328,900 filed 28 Apr 2010 (HHS Reference No. E–041–2010/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Steve Standley, PhD; 301–435–4074; *sstand@mail.nih.gov*.

Collaborative Research Opportunity: The NIH Chemical Genomics Center (NCGC), NHGRI, NIH is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize these NPSR antagonist small molecule compounds for various therapeutic uses including treatment of neuropsychiatric disorders and alcohol and drug addiction. Please contact Dr. Juan J. Marugan at *maruganj@mail.nih.gov* for more information.

A Rapid, Peripheral Blood Gene Expression Biomarker Panel for Diagnosis of Acute Ischemic Stroke

Description of Invention: There are presently no rapid, accurate diagnostic procedures or methods that can be used to determine whether a patient has suffered an acute ischemic stroke (AIS). Current technologies for diagnosis of AIS are limited by speed and resources as well as inaccuracy and generally require a high level of training to interpret the results for medical technicians. In contrast, this invention may lead to the development of a rapid and accurate clinical diagnostic kit that would require very little training for proper use and could be used in the field or the emergency room setting.

Scientists at the National Institutes of Health have discovered that expression levels of a set of nine genes may be used as biomarkers for diagnosis of AIS as well as outcome prediction. These biomarkers may be rapidly identified using peripheral whole blood and may form the basis of a rapid and accurate clinical point of care diagnostic kit.

Further, if validation is positive, this technology may enable rapid differential diagnosis between acute ischemic stroke and hemorrhagic stroke, transient ischemic attack, or any pathology mimicking a stroke. Not only can this be used to identify stroke earlier in the course of treatment, this panel may also help to better characterize stroke subtype, and identify new pathways for stroke treatment. This is important as the only FDA approved treatment for acute ischemic stroke is tissue plasminogen activator (tPA) and tPA must not be given to hemorrhagic stroke patients since it could increase intracranial bleeding. To effectively treat AIS, tPA must be administered intravenously within 3–4 hours of known stroke onset. Because the differential diagnosis of AIS versus hemorrhagic stroke is difficult without specialized imaging equipment such as a CT scan with contrast or an MRI image, only a small percentage of stroke patients (3–5%) are ever given tPA. So, a rapid and accurate clinical diagnostic kit based on this invention would have a profound public health benefit and likely a large commercial potential.

Applications:

• A rapid and accurate clinical diagnostic kit for acute ischemic stroke.
• Differentiation between acute ischemic stroke and a hemorrhagic stroke, transient ischemic attack, or any pathology mimicking a stroke.
• Aid in the prediction of outcome and identify new pathways for ischemic stroke treatment.

Advantages: Faster, more accurate, and requires less training than currently available diagnostic procedures.

Development Status: Clinical Validation Pilot Study: Whole blood was collected in a clinical setting and gene expressions were subsequently profiled.

Market: Every year, about 795,000 people in the United States have a stroke, and about 675,000 of those strokes are ischemic. In 2006, 137,000 people in the United States died of stroke (*http://www.cdc.gov/stroke/*).

Inventors: Taura L. Barr (NINR), Maria Del Mar Matarin Jimenez (NIA), Steven J. Warach (NINDS), Andrew B. Singleton (NIA), Jinhui Ding (NIA), Allissa A. Dillman (NIA), Mark P. Cookson (NIA), Yvette Conley (University of Pittsburgh).

Publication: Barr, T.L.; Conley, Y.; Ding, J.; Dillman, A.; Warach, S.; Singleton, A.; Matarin, M. Genomic biomarkers and cellular pathways of ischemic stroke by RNA gene expression profiling; *Neurology,* Volume 75(11), 14 September 2010, pp 1009–1014.

Patent Status: U.S. Provisional Application No. 61/307,233 filed 23 Feb 2010 (HHS Reference No. E–023–2010/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Jeffrey Clark Klein, PhD; 301–594–4697; *kleinjc@mail.nih.gov*.

Collaborative Research Opportunity: The NINR is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize a point of care test for ischemic stroke diagnostics and outcome prediction. Please contact Dr. Taura Barr at 304–293–0503 or *barrt@mail.nih.gov* for more information.

Dated: September 20, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–23957 Filed 9–23–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–7019–N]

Medicare Program; Meeting of the Advisory Panel on Medicare Education, October 13, 2010

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Advisory Panel on Medicare Education (the Panel) in accordance with the Federal Advisory Committee Act. The Panel advises and makes recommendations to the Secretary of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program. This meeting is open to the public.

DATES: *Meeting Date:* Wednesday, October 13, 2010 from 1 p.m. to 4 p.m., eastern daylight time (e.d.t.).

Deadline for Meeting Registration and Comments: Wednesday, October 6, 2010, 5 p.m., e.d.t.

Deadline for Requesting Special Accommodations: Wednesday, October 6, 2010, 5 p.m., e.d.t.

ADDRESSES: *Meeting Location:* The October 13, 2010 meeting will be a "virtual meeting" using Adobe Acrobat Connect Pro Meeting, a Web conferencing product that allows users to conduct live meetings and presentations over the Internet. The audio portion is also available via telephone conferencing.

Meeting Registration: The meeting is open to the public, but attendance is limited to the telephone lines available. Persons wishing to attend this meeting must register at *http://www.blsmeetings.net/H1714-4.*

Meeting Presentations, Written Comments, and Special Accommodations: Jennifer Kordonski, Designated Federal Official (DFO), Division of Forum and Conference Development, Office of External Affairs, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mailstop S1–13–05, Baltimore, MD 21244–1850 or contact Ms. Kordonski via e-mail at *Jennifer.Kordonski@cms.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer Kordonski, (410) 786–1840. Please refer to the CMS Advisory Committees' Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (*http://www.cms.hhs.gov/FACA/04_APME.asp*) for additional information and updates on committee activities. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background and Meeting Agenda

Section 9(a)(2) of the Federal Advisory Committee Act authorizes the Secretary of Health and Human Services (the Secretary) to establish an advisory panel if the Secretary determines that the panel is "in the public interest in connection with the performance of duties imposed * * * by law." Such duties are imposed by section 1804 of the Social Security Act (the Act), requiring the Secretary to provide informational materials to Medicare beneficiaries about the Medicare program, and section 1851(d) of the Act, requiring the Secretary to provide for "activities * * * to broadly disseminate information to [M]edicare beneficiaries * * * on the coverage options provided under [Medicare Advantage] in order to promote an active, informed selection among such options."

The Panel is also authorized by section 1114(f) of the Act (42 U.S.C. 1311(f)) and section 222 of the Public Health Service Act (42 U.S.C. 217a). The Secretary signed the charter establishing this Panel on January 21, 1999 (64 FR 7899, February 17, 1999) and approved the renewal of the charter on January 21, 2009 (74 FR 13442, March 27, 2009). The Panel advises and makes recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program.

The goals of the Panel are as follows:

- To provide recommendations on the development and implementation of a national Medicare education program that describes benefit options under Medicare.
- To enhance the Federal government's effectiveness in informing the Medicare consumer.
- To make recommendations on how to expand outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program.
- To assemble an information base of best practices for helping consumers evaluate benefit options and build a community infrastructure for information, counseling, and assistance.

The current members of the Panel are: Stephen P. Fera, M.B.A., Vice President, Social Mission Programs, Independence Blue Cross; Richard C. Frank, M.D., Director, Cancer Research, Whittingham Cancer Center; Cathy C. Graeff, R.Ph., M.B.A., Partner, Sonora Advisory Group; Carmen R. Green, M.D., Professor, Anesthesiology and Associate Professor, Health, Management, and Policy, University of Michigan; Cindy Hounsell, J.D., President, Women's Institute for a Secure Retirement; Kathy Hughes, Vice Chairwoman, Oneida Nation; Gail Hunt, President and Chief Executive Officer, National Alliance for Caregiving; Warren Jones, M.D., F.A.A.F.P., Executive Director, Mississippi Institute for Improvement of Geographic Minority Health; Sandy Markwood, Chief Executive Officer, National Association of Area Agencies on Aging; David W. Roberts, M.P.A.,Vice President, Government Relations, Healthcare Information and Management System Society; Julie Boden Schmidt, M.S., Associate Vice President, Training and Technical Assistance, National Association of Community Health Centers; Rebecca P. Snead, Chief Executive Officer and Executive Vice President, National Alliance of State Pharmacy Associations and APME Chair; Donna Yee, PhD, Chief Executive Officer, Asian Community Center of Sacramento Valley; Deeanna Jang, Policy Director, Asian and Pacific Islander American Health Forum; Andrew Kramer, M.D., Professor of Medicine, Division of Health Care Policy and Research, University of Colorado, Denver; and John Lui, PhD, M.B.A., Executive Director, Stout Vocational Rehabilitation Institute.

The agenda for the October 13, 2010 meeting will include the following:

- Recap of the previous (June 22, 2010) meeting.
- Subgroup Committee Work Summary.
- Medicare Outreach and Education Strategies.
- Public Comment.
- Listening Session with CMS Leadership.
- Next Steps.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. The number of oral presentations may be limited by the time available. Individuals not wishing to make a presentation may submit written comments to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

II. Virtual Meeting Participation Information and Instructions

A. Software Requirements

Software to participate in a Connect Pro meeting only requires that you have an Internet connection, a Web browser, and Adobe Flash Player Version 8 or later to attend a Web conference. Connect Pro supports nearly any operating system including Windows, Macintosh, Linux, and Solaris, as well as the most widely used browsers including Internet Explorer, Firefox, and Safari.

B. Participation in an Acrobat Connect Pro Meeting

1. Pre-Meeting Computer Testing

It is recommended that you test your computer prior to attending a meeting. You can do this by going to: *https://admin.adobe.acrobat.com/common/help/en/support/meeting_test.htm.* The connection test checks your computer to make sure all system requirements are met. If you pass the first three steps of the test, then you are ready to participate in a meeting. If you do not pass the connection test, perform the suggested actions and run the test again.

2. Joining the Meeting

Registrants will receive an e-mail invitation with meeting access information prior to meeting. When the meeting date and time arrive, click on the link or enter the URL into your Web browser. The meeting login screen appears. Select "Enter as a Guest," type in your first and last name, and click "Enter Room." The meeting launches in your browser.

To access the audio portion of the meeting please dial 1–888–469–0694 and enter passcode 1995616. If you should have difficulties accessing the meeting please contact Syreeta Jones via phone at 1–301–577–0244 ext. 4900 or via e-mail at *sjones@blseamon.com.*

Authority: Sec. 222 of the Public Health Service Act (42 U.S.C. 217a) and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102–3).

(Catalog of Federal Domestic Assistance Program No. 93.733, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 9, 2010.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–23312 Filed 9–23–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4143–N]

Medicare Program; Medicare Appeals; Adjustment to the Amount in Controversy Threshold Amounts for Calendar Year 2011

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustment in the amount in controversy (AIC) threshold amounts for Administrative Law Judge (ALJ) hearings and judicial review under the Medicare appeals process. The adjustment to the AIC threshold amounts will be effective for requests for ALJ hearings and judicial review filed on or after January 1, 2011. The 2011 AIC threshold amounts are $130 for ALJ hearings and $1,300 for judicial review.

DATES: *Effective Date:* This notice is effective on January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Liz Hosna (*Katherine.Hosna@cms.hhs.gov*), (410) 786–4993.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1869(b)(1)(E) of the Social Security Act (the Act), as amended by section 521 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), established the AIC threshold amounts for ALJ hearing requests and judicial review at $100 and $1,000, respectively, for Medicare Part A and Part B appeals. Section 940 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), amended section 1869(b)(1)(E) of the Act to require the AIC threshold amounts for ALJ hearings and judicial review to be adjusted annually. The AIC threshold amounts are to be adjusted, as of January 2005, by the percentage increase in the medical care component of the consumer price index for all urban consumers (U.S. city average) for July 2003 to July of the year preceding the year involved and rounded to the nearest multiple of $10. Section 940(b)(2) of the MMA provided conforming amendments to apply the AIC adjustment requirement to Medicare Part C (Medicare Advantage "MA") appeals and certain health maintenance organization and competitive health plan appeals. Health care prepayment plans are also subject to MA appeals rules, including the AIC adjustment requirement. Section 101 of the MMA provides for the application of the AIC adjustment requirement to Medicare Part D appeals.

A. Medicare Part A and Part B Appeals

The statutory formula for the annual adjustment to the AIC threshold amounts for ALJ hearings and judicial review of Medicare Part A and Part B appeals, set forth at section 1869(b)(1)(E) of the Act, is included in the applicable implementing regulations, 42 CFR Part 405, Subpart I, at § 405.1006(b). The regulations require the Secretary of the Department of Health and Human Services (the Secretary) to publish changes to the AIC threshold amounts in the **Federal Register** (§ 405.1006(b)(2)). In order to be entitled to a hearing before an ALJ, a party to a proceeding must meet the AIC requirements at § 405.1006(b). Similarly, a party must meet the AIC requirements at § 405.1006(c) at the time judicial review is requested for the court to have jurisdiction over the appeal (§ 405.1136(a)).

B. Medicare Part C (Medicare Advantage) Appeals

Section 940(b)(2) of the MMA applies the AIC adjustment requirement to Part C (MA) appeals by amending section 1852(g)(5) of the Act. The implementing regulations for Medicare Part C appeals are found at 42 CFR Part 422, Subpart M. Specifically, § 422.600 and § 422.612 discuss the AIC threshold amounts for ALJ hearings and judicial review. Section 422.600 grants any party to the reconsideration, except the MA organization, who is dissatisfied with the reconsideration determination, a right to an ALJ hearing as long as the amount remaining in controversy after reconsideration meets the threshold requirement established annually by the Secretary. Section 422.612 states that any party, including the MA organization, may request judicial review if, in part, the AIC meets the threshold requirement established annually by the Secretary.

C. Health Maintenance Organizations, Competitive Medical Plans, and Health Care Prepayment Plans

Section 1876(c)(5)(B) of the Act states that the annual adjustment to the AIC dollar amounts set forth in section 1869(b)(1)(E) of the Act applies to certain beneficiary appeals within the context of health maintenance organizations and competitive medical plans. The applicable implementing regulations for Medicare Part C appeals are set forth in 42 CFR Part 422, Subpart M, and as discussed above, apply to these appeals. The Medicare Part C appeals rules also apply to health care prepayment plan appeals.

D. Medicare Part D (Prescription Drug Plan) Appeals

The annually adjusted AIC threshold amounts for ALJ hearings and judicial review that apply to Medicare Parts A, B, and C appeals also apply to Medicare Part D appeals. Section 101 of the MMA added section 1860D–4(h)(1) of the Act regarding Part D appeals. This statutory provision requires a prescription drug plan sponsor to meet the requirements set forth in sections 1852(g)(4) and (g)(5) of the Act, in a similar manner as MA organizations. As noted above, the annually adjusted AIC threshold requirement was added to section 1852(g)(5) of the Act by section 940(b)(2)(A) of the MMA. The implementing regulations for Medicare Part D appeals can be found at 42 CFR Part 423, Subpart M and Subpart U. The regulations impart at § 423.562(c) that, unless the Part D appeals rules provide otherwise, the Part C appeals rules (including the annually adjusted AIC threshold amount) apply to Part D appeals to the extent they are appropriate. More specifically, § 423.1970 and § 423.1976 of the Part D appeals rules discuss the AIC threshold amounts for ALJ hearings and judicial review. Section 423.1970(a) grants a Part D enrollee, who is dissatisfied with the Independent Review Entity (IRE) reconsideration determination, a right to an ALJ hearing if the amount remaining in controversy after the IRE reconsideration meets the threshold amount established annually by the Secretary. Sections 423.1976(a) and (b) allow a Part D enrollee to request judicial review of an ALJ or MAC decision if, in part, the AIC meets the threshold amount established annually by the Secretary.

II. Annual AIC Adjustments

A. AIC Adjustment Formula and AIC Adjustments

As previously noted, section 940 of the MMA requires that the AIC threshold amounts be adjusted annually, beginning in January 2005, by the percentage increase in the medical care component of the consumer price index (CPI) for all urban consumers (U.S. city average) for July 2003 to the July of the preceding year involved and rounded to the nearest multiple of $10.

B. Calendar Year 2011

The AIC threshold amount for ALJ hearing requests will remain at $130 and the AIC threshold amount for judicial review will rise to $1,300 for the 2011 calendar year. These updated amounts are based on the 30.34 percent increase in the medical care component of the CPI from July of 2003 to July of 2010. The CPI level was at 297.6 in July of 2003 and rose to 387.898 in July of 2010. This change accounted for the 30.34 percent increase. The AIC threshold amount for ALJ hearing requests changes to $130.34 based on the 30.34 percent increase. In accordance with section 940 of the MMA, this amount is rounded to the nearest multiple of $10. Therefore, the 2011 AIC threshold amount for ALJ hearings is $130. The AIC threshold amount for judicial review changes to $1,303.42 based on the 30.34 percent increase. This amount was rounded to the nearest multiple of $10, resulting in a 2011 AIC threshold amount of $1,300.

C. Summary Table of Adjustments in the AIC Threshold Amounts

In Table 1 below, we list the (CY) 2005 through 2011 threshold amounts.

TABLE 1—AMOUNT-IN-CONTROVERSY THRESHOLD AMOUNTS

	CY 2005	CY 2006	CY 2007	CY 2008	CY 2009	CY 2010	CY 2011
ALJ Hearing	$100	$110	$110	$120	$120	$130	$130
Judicial Review	1,050	1,090	1,130	1,180	1,220	1,260	1,300

* CY—Calendar Year.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 2, 2010.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–23584 Filed 9–23–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee on Procedures Review, Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned subcommittee:

Time and Date: 9 a.m.–5 p.m., October 13, 2010.

Place: Cincinnati Airport Marriott, 2395 Progress Drive, Hebron, Kentucky 41018. Telephone (859) 334–4611, Fax (859) 334–4619.

Status: Open to the public, but without a public comment period. To access by conference call, dial the following information: (866) 659–0537, Participant Pass Code 9933701.

Background: The ABRWH was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the compensation program. Key functions of the ABRWH include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the ABRWH to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2011.

Purpose: The ABRWH is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is a reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee on Procedures Review was established to aid the ABRWH in carrying out its duty to advise the Secretary, HHS, on dose reconstructions. The Subcommittee on Procedures Review is responsible for overseeing, tracking, and participating in the reviews of all procedures used in the dose reconstruction process by the NIOSH Division of Compensation Analysis and Support (DCAS) and its dose reconstruction contractor.

Matters To Be Discussed: The agenda for the Subcommittee meeting includes: Review of draft prototype documents for informing the public on completed Subcommittee procedure reviews; discussion of the following ORAU & OCAS procedures: PER–012 (“Evaluation of Highly Insoluble Plutonium Compounds”), PER–009 (“Target Organs for Lymphoma”), OCAS TIB–0013 (“Special External Dose Reconstruction Considerations for Mallinckrodt Workers”), OTIB–014 (“Rocky Flats Internal Dosimetry Co-Worker Extension”), OTIB–019 (“Analysis of Co-worker Bioassay Data for Internal Dose Assignment”), OTIB–0029 (“Internal Dosimetry Co-worker Data for Y–12”), OTIB–0049 (“Estimating Doses for Plutonium Strongly Retained in the Lung”), OTIB–0047 (External Radiation Monitoring at the Y–12 Facility During the 1948–1949 Period”), OTIB–0051 (“Effect of Threshold Energy and Angular Response of NTA Film on Missed Neutron Dose at the Oak Ridge Y–12 Facility”), OTIB–0052 (“Parameters to Consider When Processing Claims for Construction Trade Workers”), OTIB–0054 (“Fission and Activation Product Assignment for Internal Dose-Related Gross Beta and Gross Gamma Analyses”), OTIB–0057 (“External Radiation Dose Estimates For Individuals Near the 1958 Criticality Accident at the Oak Ridge Y–12 Plant”), OTIB–0070 (“Dose Reconstruction During Residual Radioactivity Periods at Atomic Weapons Employer Facilities”), and TBD 6000 (“Site Profile for Atomic Weapons Employers that Worked Uranium and Thorium Metals”); and a continuation of the comment-resolution process for other dose reconstruction procedures under review by the Subcommittee.

The agenda is subject to change as priorities dictate.

This meeting is open to the public, but without a public comment period. In the event an individual wishes to provide comments, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below in advance of the meeting.

Contact Person for More Information: Theodore Katz, Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta, Georgia 30333, Telephone (513) 533–6800, Toll Free 1 (800) CDC–INFO, E-mail *dcas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: September 17, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–24006 Filed 9–23–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Scientific Review of P01 Applications submitted to PAR 08–117.

Date: October 20, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Marilyn Moore-Hoon, PhD, Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, 6701 Democracy Blvd., Rm. 676, Bethesda, MD 20892–4878, 301–594–4861, *mooremar@nidcr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; RFA DE–11–001 Collaborative Research on the Transition From Acute to Chronic Pain: New Models and Measures in Clinical and Preclinical Pain Research (R01).

Date: October 28, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Hotel—Silver Spring, 8777 Georgia Avenue, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Victor Henriquez, PhD, Scientific Review Officer, DEA/SRB/NIDCR, 6701 Democracy Blvd., Room 668, Bethesda, MD 20892–4878, 301–451–2405, *henriquv@nidcr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: September 20, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23951 Filed 9–23–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review F30s, R03.

Date: October 18, 2010.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Kelly, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, NIH 6701 Democracy Blvd, room 672, MSC 4878, Bethesda, md 20892–4878, 301–594–4809, *mary_kelly@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: September 16, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23949 Filed 9–23–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Allergy, Immunology, and Transplantation Research Committee.

Date: October 20, 2010.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817.

Contact Person: Zhuqing Li, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/NIH/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–9523, *zhuqing.li@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 20, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23948 Filed 9–23–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Biotechnology Activities, Office of Science Policy, Office of the Director; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the meeting of the National Science Advisory Board for Biosecurity (NSABB).

Name of Committee: National Science Advisory Board for Biosecurity.

Date: October 19, 2010.

Time: 8:30 a.m. to 4 p.m. Eastern Daylight Time (Times are approximate and subject to change).

Agenda: Presentations and discussions regarding: (1) Update of Federal activities relevant to the mission of the NSABB; (2) activities of NSABB Working Groups on Codes of Conduct; Culture of Responsibility; International Engagement; Journal Review Policies; and Outreach and Education; (3) consideration of advances in synthetic biology in relation to NSABB recommendations regarding biosecurity concerns raised by this field; (4) planning for future NSABB meetings and activities; and (5) other business of the Board.

Place: National Institutes of Health, Building 31, Center Drive, C–Wing, 6th Floor, Conference Room 10, Bethesda, Maryland 20892.

Contact Person: Ronna Hill, NSABB Program Assistant, NIH Office of Biotechnology Activities, 6705 Rockledge Drive, Suite 750, Bethesda, Maryland 20892, (301) 496–9838, *hillro@od.nih.gov.*

Under authority 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established the NSABB to provide advice, guidance and leadership regarding federal oversight of dual use research, defined as biological research that generates information and technologies that could be misused to pose a biological threat to public health and/or national security.

The meeting will be open to the public, however pre-registration is strongly recommended due to space limitations. Persons planning to attend should register online at: *http://oba.od.nih.gov/biosecurity/biosecurity_meetings.html* or by calling Palladian Partners, Inc. (Contact: Joel Yaccarino at 301–650–8660.) Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should indicate these requirements upon registration.

This meeting will also be webcast. To access the webcast, as well as the draft meeting agenda and pre-registration information, connect to: *http://oba.od.nih.gov/biosecurity/biosecurity_meetings.html.* Please check this site for updates.

Any member of the public interested in presenting oral comments relevant to the mission of the NSABB at the meeting may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of an organization may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments relevant to the mission of the NSABB. All written comments must be received by October 12, 2010 and should be sent via e-mail to *nsabb@od.nih.gov* with "NSABB Public Comment" as the subject line or by regular mail to 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, Attention: Ronna Hill. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Dated: September 20, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23947 Filed 9–23–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; NIH Joint Neuroscience T32 Training Program.

Date: October 25, 2010.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Anne E. Schaffner, PhD, Scientific Review Officer, Division of Extramural Research, National Eye Institute, National Institutes of Health, 5635 Fishers Lane, Suite 1300, MSC 9300, 301–451–2020, *aes@nei.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: September 20, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23979 Filed 9–23–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0481]

Center for Veterinary Medicine eSubmitter Workshop; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

The Food and Drug Administration (FDA) is announcing a public workshop entitled: "Center for Veterinary Medicine (CVM) eSubmitter Workshop." The purpose of the public workshop is to provide the regulated animal health industry that submits new animal drug applications to CVM's Office of New Animal Drug Evaluation (ONADE) access to the beta-release of the electronic submission tool (eSubmitter) developed by CVM as agreed to in the Animal Drug User Fee Amendments (ADUFA II) of 2008 (*http://www.fda.gov/ForIndustry/UserFees/AnimalDrugUserFeeActADUFA/ucm044941.htm*). The ONADE will be soliciting feedback on both the eSubmitter tool and its compatibility with the industry's current IT systems, as well as the questions asked within the tool.

This workshop will fulfill one of the 10 workshops agreed to in ADUFA II. The workshop will provide insight on the eSubmitter template development and its customization for the animal health industry as well as providing break-out sessions in which specific submissions will be built as part of the demonstration. Lastly, the ONADE will be seeking up to nine participating companies to work with CVM in testing the transmission of eSubmitter developed files through FDA's electronic submission gateway (ESG) and CVM's electronic submission system (ESS). Information about the workshop and availability of the eSubmitter tool can be found on FDA's eSubmitter Web site at *http://www.fda.gov/ForIndustry/FDAeSubmitter/default.htm*.

Dates and Time: The public workshop will be held on October 21, 2010, from 9 a.m. to 4 p.m. (EST/EDST).

Location: The public workshop will be held virtually through both Adobe Connect Pro on-line and with conference call-in numbers. Both the call-in numbers and the Adobe Connect Pro web link will be emailed to all registrants.

Contact Person: Charles Andres, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 240–276–8229, email: *charles.andres@fda.hhs.gov*.

Registration: Registration for the workshop can be made at: *https://collaboration.fda.gov/cvm_esubmitter_workshop_oct21/event/registration.html* on or before October 15, 2010. There is no registration fee for the public workshop. If you need special accommodations due to a disability, please contact Charles Andres (see *Contact Person*) at least 7 days in advance.

Comments: FDA is holding this public workshop to obtain information about the eSubmitter tool. The deadline for submitting comments regarding this public workshop is December 31, 2010.

Regardless of whether a person attended the public workshop, interested persons may submit either electronic or written comments regarding this document. Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville MD 20852. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Transcripts: Transcripts of the public workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page. A recording of the public workshop will be available on the Internet at *http://www.fda.gov/ForIndustry/FDAeSubmitter/default.htm*.

Dated: September 17, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–23972 Filed 9–23–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3233–N]

Medicare Program; Town Hall Meeting on the Physician Compare Web Site, October 27, 2010

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: Section 10331 of the Patient Protection and Affordable Care Act of 2010, "Public Reporting of Performance Information" requires CMS to establish a Physician Compare Web site by January 1, 2011. This notice announces a Town Hall meeting to discuss the Physician Compare Web site. The purpose of this Town Hall meeting is to solicit input from stakeholders on the Physician Compare Web site. The opinions and alternatives provided during this meeting will assist us in future expansion of the Physician Compare Web site. The meeting is open to the public, but attendance is limited to space available.

DATES: *Meeting Date:* Wednesday, October 27, 2010 from 1 to 5 p.m., eastern daylight time (*e.d.t.*).

Timeframe for Meeting Registration: Monday, September 27, 2010 through Wednesday, October 13, 2010 at 5 p.m., *e.d.t.*

Deadline for Special Accommodations Requests: Wednesday, October 13, 2010 at 5 p.m., *e.d.t.*

ADDRESSES: *Meeting Location:* The Town Hall meeting will be held in the main auditorium of the Centers for Medicare and Medicaid Services single site, 7500 Security Boulevard, Baltimore, MD 21244.

Registration and Special Accommodations: Persons interested in attending the meeting or participating by teleconference must register by completing the online registration via the Web site at *http://www.usqualitymeasures.org/qm/*. Individuals who require special accommodations should send a request via e-mail or regular mail to the contact specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Written Comments or Statements: Written comments or statements may be sent via e-mail to *physiciancompare@cms.hhs.gov* or sent via regular mail to: Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1850, Mail Stop S3–02–01, Attn: Physician Compare Town Hall Meeting Comments. All persons planning to make a statement in person at the listening session are urged to submit statements in writing during the Town Hall meeting and should subsequently submit the information electronically by the timeframe specified in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Regina Chell, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, Mailstop S3–02–01, Attn: Physician Compare Town Hall Meeting, 7500 Security Boulevard, Baltimore, MD 21244 or contact Ms. Chell by phone at 410–786–6551, or via e-mail at *Regina.Chell@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 10331 of the Patient Protection and Affordable Care Act of 2010 (the Affordable Care Act) requires CMS to establish a Web site, which will be known as Physician Compare, containing information on physicians enrolled in the Medicare program and other eligible professionals who participate in the Physician Quality Reporting Initiative (PQRI) by January 1, 2011. Section 10331 of the Affordable Care Act also requires CMS to implement a plan to make information on physician performance publicly available through the Physician Compare Web site no later than January 1, 2013 (and for reporting periods beginning no earlier than January 1, 2012).

In implementing section 10331 of the Affordable Care Act, the law requires establishing processes, to the extent practicable, to ensure the following:

• The data made public are statistically valid and reliable, and provide an accurate and robust portrayal of performance.

• Appropriate attribution of care.

• Timely statistical performance feedback.

• The data reflects the care provided to all patients including Medicare and other payers where such data would more accurately portray performance.

• Physicians and other eligible professionals have a reasonable opportunity to review their individual data prior to publication.

The Affordable Care Act also requires the assurance of patient privacy, input from multi-stakeholder groups, and taking into consideration the plan to transition to value-based purchasing. Section 10331 of the Affordable Care Act also requires CMS to submit a Report to Congress on the Physician Compare Web site by January 15, 2015, and authorizes CMS to establish a demonstration program by January 1, 2019, to provide financial incentives to Medicare beneficiaries who are furnished services by high quality physicians. The Affordable Care Act requires that the measures include, to the extent practicable, the following:

• Measures collected under the PQRI;

• An assessment of patient health outcomes and the functional status of patients;

• An assessment of the continuity and coordination of care and care transitions, including episodes of care and risk-adjusted resource use;

• An assessment of efficiency;

• An assessment of patient experience and patient, caregiver, and family engagement;

• An assessment of the safety, effectiveness, and timeliness of care; and

• Other information as determined appropriate by the Secretary.

II. Town Hall Format

The Town Hall meeting will begin with an overview of the objectives for the session. The remainder of the meeting will be devoted to presenting and receiving input on possible key Web site design issues.

Following each presentation, the meeting agenda will provide opportunities for brief 2-minute comments on each of the key issues from on-site session attendees. As time allows, telephone participants will also have the opportunity to provide brief 2-minute comments on each of the key issues. Written submissions will also be accepted through the timeframe specified in the **DATES** section of this notice.

III. Registration Instructions

There is no registration fee. For security reasons, any persons wishing to attend this meeting must register by the date listed in the **DATES** section of this notice. Persons interested in attending the meeting or participating by teleconference must register by completing the online registration via the Web site at *http://www.usqualitymeasures.org/qm/.* The online registration system will generate a confirmation page to indicate the completion of your registration. Please print this page as your registration receipt. If seating capacity has been reached, you will be notified that the meeting has reached capacity.

Individuals may also participate in the Town Hall meeting by teleconference. Registration is required as the number of call-in lines will be limited. The call-in number will be provided upon confirmation of registration.

We anticipate posting an audio download and/or transcript of the Town Hall meeting on the CMS Web site after completion of the listening session at *http://www.usqualitymeasures.org/qm/.*

IV. Security, Building, and Parking Guidelines

Because this meeting will be located on Federal property, for security reasons, any persons wishing to attend this meeting must register by the deadline specified in the **DATES** section of this notice at the address specified in the **ADDRESSES** section of this notice. Individuals who have not registered in advance will not be allowed to enter the building to attend the meeting. Seating capacity is limited to the first 250 registrants.

The on-site check-in for visitors will begin 45 minutes prior to the start of the meeting. Please allow sufficient time to go through the security checkpoints. It is suggested that you arrive no later than 30 minutes before the start of the meeting so that you will be able to arrive at the meeting on time. All items brought to the building, whether personal or for the purpose of demonstration or to support a presentation, are subject to inspection.

Security measures will include inspection of vehicles, inside and out, at the entrance to the grounds. In addition, all persons entering the building must pass through a metal detector. All items brought to CMS, including personal items such as laptops, cell phones, and P.D.A's, are subject to physical inspection.

Authority: Section 10331 of the Affordable Care Act.

(Catalog of Federal Domestic Assistance Program No. 93–773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Insurance Program)

Dated: September 16, 2010.

Donald M. Berwick,

Administrator, Centers for Medicare and Medicaid Services.

[FR Doc. 2010–23792 Filed 9–23–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, September 30, 2010, 8:30 a.m. to October 1, 2010, 5 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on September 9, 2010, 75 FR 54896–54897.

The meeting will be one day only September 30, 2010. The meeting time and location remain the same. The meeting is closed to the public.

Dated: September 20, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23954 Filed 9–23–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Pilot Clinical Studies in Nephrology and Urology.

Date: October 18, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Ryan G. Morris, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892. 301–435–1501. *morrisr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Stem Cell and Developmental Biology.

Date: October 25–26, 2010.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Noni Byrnes, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5130, MSC 7840, Bethesda, MD 20892. (301) 435–1023. *byrnesn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Biophysical and Physiological Neuroscience.

Date: November 8–9, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Willard InterContinental Hotel, 1401 Pennsylvania Avenue, NW., Washington, DC 20004.

Contact Person: Eugene Carstea, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892. (301) 408–9756. *carsteae@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Biomedical Sensing, Measurement and Instrumentation [SSMI] (SBIR/STTR).

Date: November 8, 2010.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Guo Feng Xu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892. 301–435–1032. *xuguofen@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowship: Biophysical and Biochemical Sciences.

Date: November 8–9, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alexander Gubin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892. 301–435–2902. *gubina@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR09–160, 161, 162: Cancer Health Disparities and Diversity in Basic Cancer Research.

Date: November 9–10, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Cathleen L Cooper, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892. 301–443–4512. *cooperc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–10–082: Shared Instrumentation: Confocal Microscopy and Advanced Imaging.

Date: November 9–10, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Amalfi Hotel, 20 West Kinzie Street, Chicago, IL 60654.

Contact Person: Jonathan Arias, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892. 301–435–2406. *ariasj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Clinical Neurophysiology, Devices, Auditory Devices and Neuroprosthesis.

Date: November 11–12, 2010.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The Ritz-Carlton, Washington DC, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Keith Crutcher, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892. 301–435–1278. *crutcherka@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Neuropharmacology.

Date: November 11–12, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The U.S. Grant Hotel, 326 Broadway, San Diego, CA 92101.

Contact Person: Aidan Hampson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7850, Bethesda, MD 20892. (301) 435–0634. *hampsona@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PA09–064: Seizure Mitigation through Continuous EEG with Responsive Vagus Nerve Stimulation.

Date: November 12, 2010.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Ritz-Carlton, Washington DC, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Keith Crutcher, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892. 301–435–1278. *crutcherka@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine;

93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 20, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23952 Filed 9–23–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0268]

Dental Products Panel of the Medical Devices Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Dental Products Panel of the Medical Devices Advisory Committee. This meeting was announced in the **Federal Register** of June 11, 2010 (75 FR 33315). The amendment is being made to reflect a change in the *Agenda* portion of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Olga I. Claudio, Food and Drug Administration, Center for Devices and Radiological Health, 10903 New Hampshire Ave., Bldg. 66, rm. 1553, Silver Spring, MD 20993–0002, 301–796–7608, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington DC area), code 3014512518. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 11, 2010, FDA announced that a meeting of the Dental Products Panel of the Medical Devices Advisory Committee would be held on December 14 and 15, 2010. On page 33316, in the first column, in the *Agenda* portion of the document, in the second full paragraph, in the second sentence, the phrase "(docket numbers FDA–2008–N–0163 and FDA–2009–P–0357)" is changed to read as follows:

"(docket numbers FDA–2008–N–0163, FDA–2009–P–0357, and FDA–2010–P–0056–0001)"

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: September 21, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–23914 Filed 9–23–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3240–N]

Medicare Program; Meeting of the Medicare Evidence Development and Coverage Advisory Committee—November 17, 2010

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces that a public meeting of the Medicare Evidence Development & Coverage Advisory Committee (MEDCAC) ("Committee") will be held on Wednesday, November 17, 2010. The Committee generally provides advice and recommendations concerning the adequacy of scientific evidence needed to determine whether certain medical items and services can be covered under the Medicare statute. This meeting will focus on the currently available evidence regarding the clinical benefits and harms of on-label and off-label use of Autologous Cellular Immunotherapy Treatment of Metastatic Prostate Cancer. This meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)).

DATES: *Meeting Date:* The public meeting will be held on Wednesday, November 17, 2010 from 7:30 a.m. until 4:30 p.m., Eastern Standard Time (EST).

Deadline for Submission of Written Comments: Written comments must be received at the address specified in the **ADDRESSES** section of this notice by 5 p.m. EST, October 18, 2010. Once submitted, all comments are final.

Deadlines for Speaker Registration and Presentation Materials: The deadline to register to be a speaker and to submit powerpoint presentation materials and writings that will be used in support of an oral presentation, is 5 p.m., EST on Wednesday, October 18, 2010. Speakers may register by phone or via e-mail by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Presentation materials must be received at the address specified in the **ADDRESSES** section of this notice.

Deadline for All Other Attendees Registration: Individuals may register online at *http://www.cms.gov/mcd/index_list.asp?list_type=mcac* via e-mail at *MEDCAC_Registration@cms.hhs.gov,* or by phone by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by 5 p.m. EST, Wednesday, November 10, 2010. We will be broadcasting the meeting via Webinar. You must register for the Webinar portion of the meeting at *https://webinar.cms.hhs.gov/_a7/txmetaprostatemedcac1117/event/registration.html* by 5 p.m. EST, Wednesday, November 10, 2010.

Deadline for Submitting a Request for Special Accommodations: Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to contact the Executive Secretary as specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than 5 p.m., EST Friday, November 5, 2010.

ADDRESSES: *Meeting Location:* The meeting will be held in the main auditorium of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244.

Submission of Presentations and Comments: Presentation materials and written comments that will be presented at the meeting must be submitted via e-mail to *MedCACpresentations@cms.hhs.gov* or by regular mail to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Maria Ellis, Executive Secretary for MEDCAC, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, Coverage and Analysis Group, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244 or contact Ms. Ellis by phone (410–786–0309) or via e-mail at *Maria.Ellis@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The MEDCAC, formerly known as the Medicare Coverage Advisory Committee (MCAC), provides advice and recommendations to CMS regarding clinical issues. (For more information on MCAC, see the December 14, 1998 **Federal Register** (63 FR 68780).) This notice announces the November 17, 2010, public meeting of the Committee. During this meeting, the Committee will discuss the currently available evidence regarding the clinical benefits and harms of on-label and off-label use of Autologous Cellular Immunotherapy Treatment of Metastatic Prostate Cancer. Background information about this topic, including panel materials, is available at *http://www.cms.hhs.gov/center/coverage.asp.* We encourage the participation of appropriate organizations with expertise in the use of Autologous Cellular Immunotherapy Treatment of Metastatic Prostate Cancer.

II. Meeting Format

This meeting is open to the public. The Committee will hear oral presentations from the public for approximately 45 minutes. The Committee may limit the number and duration of oral presentations to the time available. Your comments should focus on issues specific to the list of topics that we have proposed to the Committee. The list of research topics to be discussed at the meeting will be available on the following Web site prior to the meeting: *http://www.cms.hhs.gov/mcd/index_list.asp?list_type=mcac.* We require that you declare at the meeting whether you have any financial involvement with manufacturers (or their competitors) of any items or services being discussed.

The Committee will deliberate openly on the topics under consideration. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. The Committee will also allow a 15-minute unscheduled open public session for any attendee to address issues specific to the topics under consideration. At the conclusion of the day, the members will vote and the Committee will make its recommendation(s) to CMS.

III. Registration Instructions

CMS' Coverage and Analysis Group is coordinating meeting registration. While there is no registration fee, individuals must register to attend. You may register online at *http://www.cms.gov/mcd/index_list.asp?list_type=mcac,* via e-mail at *MEDCAC_Registration@cms.hhs.gov,* or by phone by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the deadline listed in the **DATES** section of this notice. Please provide your full name (as it appears on your state-issued driver's license), address, organization, telephone, fax number(s), and e-mail address. You will receive a registration confirmation with instructions for your arrival at the CMS complex or you will be notified the seating capacity has been reached.

You must register for the Webinar portion of the meeting at *https://webinar.cms.hhs.gov/_a7/txmetaprostatemedcac1117/event/registration.html* by the deadline listed in the **DATES** section of this notice.

IV. Security, Building, and Parking Guidelines

This meeting will be held in a Federal government building; therefore, Federal security measures are applicable. We recommend that confirmed registrants arrive reasonably early, but no earlier than 45 minutes prior to the start of the meeting, to allow additional time to clear security. Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Inspection of vehicle's interior and exterior (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Inspection, via metal detector or other applicable means of all persons brought entering the building. We note that all items brought into CMS, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 45 minutes prior to the convening of the meeting.

All visitors must be escorted in areas other than the lower and first floor levels in the Central Building.

Authority: 5 U.S.C. App. 2, section 10(a).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 8, 2010.

Barry M. Straube

Chief Medical Officer and Director, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–23582 Filed 9–23–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Prevention, Prophylaxis, Cure, Amelioration, and/or Treatment of Infection and/or the Effects Thereof of Chikungunya Infections in Humans

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the invention embodied in Patent Applications USSN 61/118,206, filed on November 26, 2008, and 61/201,118, filed on December 5, 2008; and PCT/US2009/006294, filed November 24, 2009; entitled "Virus Like Particle Compositions and Methods of Use", to Merck Sharp & Dohme Corp. having a place of business in 770 Sumneytown Pike, West Point, PA 19486. The patent rights in this invention have been assigned to the United States of America.

DATES: Only written comments and/or application for a license that are received by the NIH Office of Technology Transfer on or before October 25, 2010 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Cristina Thalhammer-Reyero, PhD , M.B.A., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; E-mail: *ThalhamC@mail.nih.gov;* Telephone: 301–435–4507; Facsimile: 301–402–0220.

SUPPLEMENTARY INFORMATION: The prospective worldwide exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 30 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention relates to compositions and methods of use as vaccines of virus-like particles (VLPs) expressing one or more alphavirus capsid or envelope proteins, and in particular Chikungunya virus (CHIKV) envelope proteins. The invention also describes DNA, viral or other gene-based vector and VLP vaccines, methods of making and methods of their use in inducing immunity to alphavirus infection. Alphaviruses are RNA-containing viruses that cause a wide variety of mosquito-transmitted diseases, including equine encephalitis. CHIKV, an alphavirus in the family Togaviridae, was first isolated in Tanzania in 1952 and is transmitted to humans by mosquitoes. The disease caused by CHIKV resembles infection by dengue virus, characterized by rash, high fever, and severe, sometimes persistent arthritis.

The field of use may be limited to "Prevention, prophylaxis, cure, amelioration, and/or treatment of infection and/or the effects thereof of Chikungunya infections in humans".

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 20, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development & Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–23975 Filed 9–23–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; as last amended at 75 FR 57282–57283 dated September 20, 2010).

This notice reflects organizational changes in the Health Resources and Services Administration. Specifically, this notice updates the functional statement for the Bureau of Clinician Recruitment and Service (RU) to reduce fragmentation and overlap and establish an increased emphasis on policy and program development, external communication and outreach, customer service and system and analytical support.

Chapter RU—Bureau of Clinician Recruitment and Service

Section RU–10, Organization

Delete in its entirety and replace with the following:

The Office of the Associate Administrator (RU) is headed by the Associate Administrator, Bureau of Clinician Recruitment and Service (BCRS), who reports directly to the Administrator, Health Resources and Services Administration. BCRS includes the following components:

(1) Office of the Associate Administrator (RU);
(2) Office of Legal and Compliance (RU1);
(3) Division of National Health Service Corps (RU5);
(4) Division of Nursing and Public Health (RU6);
(5) Division of External Affairs (RU7);
(6) Office of Policy and Program Development (RU8);
(7) Division of Program Operations (RU9);
(8) Division of Regional Operations (RU10); and
(9) Office of Business Operations (RU11).

Section RU–20, Functions

(1) Delete the functional statement for the Bureau of Clinician Recruitment and Service (RU) and replace in its entirety.

Office of the Associate Administrator (RU)

Provides overall leadership, direction, coordination, and planning in support of Bureau of Clinician Recruitment and Service (BCRS) programs that are designed to improve the health of the Nation's underserved communities and vulnerable populations by coordinating the recruitment and retention of caring health professionals in the healthcare system and supporting communities' efforts to build more integrated and sustainable systems of care. Specifically: (1) Establishes program goals, objectives and priorities, and provides oversight as to their execution; (2) plans, directs, coordinates and evaluates Bureau-wide management activities; (3) maintains effective relationships within HRSA and with other Department of Health and Human Services (HHS) organizations, other Federal agencies, State and local governments, and other public and private organizations concerned with improving the health status of the Nation's underserved communities and vulnerable populations by recruiting and retaining health care clinicians into service in areas of greatest need; (4) plans, directs and coordinates Bureau-wide administrative management activities, *i.e.,* budget, personnel, procurements, delegations of authority, and has responsibilities related to the awarding of BCRS funds; and (5) oversees the development of BCRS program policies.

Office of Legal and Compliance (RU1)

Serves as the focal point for service obligation issue resolution and quality assurance for the Bureau's programs. Specifically: (1) Analyzes, administers and manages procedures for the BCRS portfolio of scholarship and loan repayment participants who have breached their service obligation, requested a waiver or suspension, and/or are in default and have requested to serve under a Forbearance, Judgment or Settlement Agreement; (2) reviews default recommendations, determines the action of default, and initiates and monitors procedures for default debt collection; (3) provides programmatic information to Agency officials, the Office of the General Counsel, the Office of Inspector General, Program Support Center, and the Department of Justice for default debt collection, trials, bankruptcy hearings, and other activities; (4) reviews requests and makes determinations regarding scholarship and loan repayment participants' eligibility for a suspension or waiver of their service or default debt obligation; (5) implements policies and procedures in conjunction with default reduction activities, including return to service arrangements and other actions to maximize compliance with scholarship and loan repayment service obligations; and (6) serves as the BCRS quality assurance function.

Division of National Health Service Corps (RU5)

Serves as the point of contact for responding to inquiries, disseminating program information, providing technical assistance, and processing applications and awards pertaining to National Health Service Corps (NHSC) scholarship and loan repayment programs and site approvals. Specifically: (1) Reviews, ranks and selects participants for the scholarship and loan repayment programs; (2) verifies and processes loan and lender related payments in prescribed manner and maintains current information on scholarship and loan repayment applications and awards through automated BCRS information systems; (3) provides oversight, processing and coordination of reviews of NHSC site applications and vacancy management activities; (4) manages scholar in-school activities; (5) facilitates scholar placement; and (6) provides oversight, processing and coordination for the Ready Responder program.

Division of Nursing and Public Health (RU6)

Serves as the point of contact for responding to inquiries, disseminating program information, providing technical assistance, and processing applications and awards pertaining to work force related scholarship and loan repayment programs. Specifically: (1) Reviews, ranks and selects participants for the scholarship and loan repayment programs; (2) verifies and processes loan and lender related payments in prescribed manner and maintains current information on scholarship and loan repayment applications and awards through automated BCRS information systems; (3) manages scholar in-school activities; and (4) facilitates scholar placement.

Division of External Affairs (RU7)

Serves as the focal point for the development of all messaging both internal and external and dissemination of promotional materials, brochures, speeches, and articles. Specifically: (1) Leads, coordinates, and conducts student, clinician and site recruitment, retention and outreach strategies and related activities; (2) coordinates all Bureau conferences and clinician and site training; (3) establishes and manages partner collaboration, NHSC alumni and the State Primary Care Offices (PCOs); (4) performs marketplace analysis; (5) maintains a speaker for the Bureau communicating clinician and site success stories and promotes the Bureau's programs; and (6) maintains responsibility for all communication functions including but not limited to the Bureau Web site, BCRS Call Center and customer service portal, and newsletters.

Office of Policy and Program Development (RU8)

Serves as the focal point for the development of BCRS programs and policies. Specifically: (1) Leads and coordinates the analysis, development and drafting of policy impacting BCRS programs; (2) coordinates program planning and tracking of legislation and other information related to BCRS programs; (3) leads and monitors the development of workforce projections relating to BCRS program; (4) provides oversight, processing and coordination for the J1-visa program; (5) works collaboratively with other components within HRSA and HHS, and with other Federal agencies, State and local governments, and other public and private organizations on issues affecting BCRS programs and policies; (6) performs environmental scanning on issues that affect BCRS programs and assesses the impact of programs on underserved communities; (7) monitors BCRS activities in relation to HRSA's Strategic Plan; (8) develops budget projections and justifications; and (9) serves as the Bureau's focal point for program information.

Division of Program Operations (RU9)

Serves as the organizational focal point for the Bureau's centralized, comprehensive customer service function to support program participants. Provides regular and ongoing communication, technical assistance and support to program participants through the period of obligated service and closeout. Specifically: (1) Manages the staff and daily operations of the Bureau's Call Center and centralized customer service function; (2) initiates contact with and monitors program participants throughout their service; (3) manages clinician support, site transfers, in-service reviews and recommends suspensions, waivers and defaults; (4) manages the 6-month verification process; (5) conducts closeout activities for each program participant and issues completion certificates; and (6) maintains program participants' case files in the Bureau's management information system.

Division of Regional Operations (RU10)

Serves as the regional component of BCRS cutting across all Divisions and working with BCRS programs as a whole. Specifically, the Regional Offices will support BCRS by: (1) Completing NHSC site visits; (2) providing support for recruitment and retention of primary health care providers in Health Professions Shortage Areas; (3) providing ongoing surveillance and analysis of workforce trends and making recommendations on ways to improve the effectiveness of policies and programs; (4) understanding needs of the States as it relates to recruitment and retention of clinicians to improve public health and health care systems; and (5) conducting other activities designed to improve access to quality care, reduce disparities and improve public health in accordance with HRSA authorities and in partnership with related public and private sector organizations.

Office of Business Operations (RU11)

Serves as the focal point for the Bureau's management information systems and reports, data analysis, and automation of business processes to support the recruitment and retention of health professionals in underserved areas and supporting communities' efforts to build more integrated and sustainable systems of care. Specifically: (1) Provides leadership for implementing BCRS systems development, enhancement and administration; (2) designs and implements data systems to assess and improve program performance; (3) provides user support and training to facilitate the effectiveness of the Bureau's information systems; (4) coordinates quality and performance reporting activities; (5) identifies, provides and coordinates assistance to BCRS programs to support performance reporting activities; and (6) continuously identifies, reduces or eliminates suboptimal business processes throughout the Bureau.

Section RU–30, Delegations of Authority

All delegations of authority and re-delegations of authority made to HRSA officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

This reorganization is upon date of signature.

Dated: September 20, 2010.

Mary K. Wakefield,

Administrator.

[FR Doc. 2010–23892 Filed 9–23–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Application—Alternative Inspection Services (SENTRI Application and FAST Commercial Driver Application)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0121.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and

Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Alternative Inspection Services including the SENTRI Application (CBP Form 823S) and the FAST Commercial Driver Application (CBP Form 823F). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (75 FR 38821) on July 6, 2010, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 25, 2010.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Application—Alternative Inspection Services including the SENTRI application and the FAST Commercial Driver Application.

OMB Number: 1651–0121.

Form Numbers: 823S (SENTRI) and 823F (FAST).

Abstract: This collection of information is to implement CBP's Trusted Traveler Programs, including the Secure Electronic Network for Travelers Rapid Inspection (SENTRI), which allows expedited entry at specified southwest land border ports of entry, and the Free and Secure Trade program (FAST), which provides expedited border processing for known, low-risk commercial drivers. The purpose of the Trusted Traveler programs is to provide prescreened travelers expedited entry into the United States. The benefit to the traveler is less time spent in line waiting to be processed by CBP. The Trusted Traveler programs are provided for in 8 CFR 235.7. Applicants may apply for these programs using paper forms available at *http://www.cbp.gov/or* through the Global On-line Enrollment System (GOES) at *https://goes-app.cbp.dhs.gov.*

Current Actions: This submission is being made to revise the burden hours as a result of revised burden estimates for Forms 823S, 823F and GOES. There are no changes to the information being collected.

Type of Review: Extension with a change to the burden hours.

Affected Public: Businesses, Individuals.

SENTRI (Form 823S):

Estimated Number of Respondents: 63,415.

Estimated Number of Total Annual Responses: 63,415.

Estimated Time per Response: 40 minutes.

Estimated Total Annual Burden Hours: 42,488.

Estimated Costs: $1,585,375.

FAST (Form 823F):

Estimated Number of Respondents: 28,910.

Estimated Number of Total Annual Responses: 28,910.

Estimated Time per Response: 40 minutes.

Estimated Total Annual Burden Hours: 19,370.

Estimated Costs: $1,445,500.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: September 20, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–23888 Filed 9–23–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3315–EM; Docket ID FEMA–2010–0002]

Massachusetts; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the Commonwealth of Massachusetts (FEMA–3315–EM), dated September 2, 2010, and related determinations.

DATES: *Effective Date:* September 4, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 4, 2010.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–24008 Filed 9–23–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1937–DR; Docket ID FEMA–2010–0002]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–1937–DR), dated September 15, 2010, and related determinations.

DATES: *Effective Date:* September 15, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 15, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Tennessee resulting from severe storms and flooding during the period of August 17–21, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gracia B. Szczech, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Tennessee have been designated as adversely affected by this major disaster:

Clay, Cocke, Hardin, Jackson, Macon, Overton, Pickett, Putnam, Smith, and Wayne Counties for Public Assistance.

All counties within the State of Tennessee are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–24004 Filed 9–23–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1936–DR; Docket ID FEMA–2010–0002]

New Mexico; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Mexico (FEMA–1936–DR), dated September 13, 2010, and related determinations.

DATES: *Effective Date:* September 13, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 13, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of New Mexico resulting from severe storms and flooding during the period of July 25 to August 9, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of New Mexico.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Sandy Coachman, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Mexico have been designated as adversely affected by this major disaster:

Cibola, McKinley, Mora, San Juan, and Socorro Counties for Public Assistance. Direct Federal assistance is authorized.

All counties within the State of New Mexico are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–24005 Filed 9–23–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1930–DR; Docket ID FEMA–2010–0002]

Iowa; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–1930–DR), dated July 29, 2010, and related determinations.

DATES: *Effective Date:* August, 31, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 31, 2010.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–24007 Filed 9–23–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1931–DR; Docket ID FEMA–2010–0002]

Texas; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–1931–DR), dated August 3, 2010, and related determinations.

DATES: *Effective Date:* September 16, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 3, 2010.

Lubbock County for Individual Assistance (already designated for Public Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–24010 Filed 9–23–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1933–DR; Docket ID FEMA–2010–0002]

Wisconsin; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Wisconsin (FEMA–1933–DR), dated August 11, 2010, and related determinations.

DATES: *Effective Date:* September 18, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Wisconsin is hereby amended to include the Individual Assistance program for the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 11, 2010.

Grant and Milwaukee Counties for Individual Assistance (already designated for Public Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–24013 Filed 9–23–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1934–DR; Docket ID FEMA–2010–0002]

Missouri; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–1934–DR), dated August 17, 2010, and related determinations.

DATES: *Effective Date:* September 20, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 17, 2010.

Perry County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–24014 Filed 9–23–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1930–DR; Docket ID FEMA–2010–0002]

Iowa; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–1930–DR), dated July 29, 2010, and related determinations.

DATES: *Effective Date:* September 17, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 29, 2010.

Appanoose and Wapello Counties for Individual Assistance (already designated for Public Assistance).

Pocahontas County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–24012 Filed 9–23–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–92]

Notice of Submission of Proposed Information Collection to OMB Ginnie Mae Mortgage-Backed Securities Programs

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information is collected by Ginnie Mae from issuers/customers that participate in its Mortgage-Backed Securities programs to monitor performance and compliance with established rules and regulations.

DATES: *Comments Due Date: October 25, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2503–0033) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. E-mail: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Leroy McKinney Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of proposal: Ginnie Mae Mortgage-Backed Securities Programs.

OMB approval number: 2503–0033.

Form numbers: 11700, 11701, 11702, 11704, 11705, 11706, 11707, 11708, 11709, 11709–A, 11710–A, 11710–B, 11710–C, 11701–D, 11710–E, 11711–A, 11711–B, 11714, 11714–SN, 11720, 11715, 11732, and 11745.

Description of the need for the information and its proposed use:

This information is collected by Ginnie Mae from issuers/customers that participate in its Mortgage-Backed Securities programs to monitor performance and compliance with established rules and regulations.

Frequency of submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	210	495,260		Varies		76,493

Total estimated burden hours: 76,493.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 17, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–23866 Filed 9–23–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–37]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date: September 24, 2010.*

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.DC), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: September 16, 2010.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2010–23580 Filed 9–23–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–N–25A]

Notice of Voluntary Request To Indicate Intent To Apply for the Fiscal Year (FY) 2010 Choice Neighborhoods Grant Program

AGENCY: Office of the Assistant Secretary, Office of Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This Notice requests that eligible applicants intending to submit either a Planning or Implementation grant application under HUD's FY2010 Round 1 Choice Neighborhoods Grant Program Notice of Funding Availability (NOFA), which was posted on Grants.gov on August 26, 2010, notify HUD of their intent to apply by October 7, 2010. Eligible applicants under this NOFA are public housing authorities, local governments, nonprofits, and for profit developers that apply jointly with a public entity, as defined in the NOFA. HUD is requesting this information in order to effectively plan its application review process and to ensure timely decision making. Responding to this request is voluntary and not binding. Your not responding to this request will not prohibit you from submitting a Planning or Implementation grant application under this NOFA and will not affect HUD's review of your application.

If you choose to respond to this voluntary request, please do the following:

1. By October 7, 2010, contact the NOFA Information Center at 1–800–HUD–8929 (toll-free) in order to indicate your intent to apply for either Choice Neighborhoods Planning Grants or Choice Neighborhoods Implementation Grants. Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

2. When you contact the NOFA Information Center, please be prepared to provide the following information:

a. The organization name of the Lead Applicant;

b. Whether you intend to apply for a Choice Neighborhoods Planning Grant or Choice Neighborhoods Implementation Grant;

c. The city and state where the targeted neighborhood and distressed public and/or assisted housing project are located;

d. The name of the eligible neighborhood targeted by the intended application; and

e. The name of the distressed public and/or assisted housing project targeted by the intended application.

Please note that the October 26, 2010 deadline for Choice Neighborhoods applications remains unchanged.

FOR FURTHER INFORMATION CONTACT: To respond to this request, please contact the NOFA Information Center as indicated above. For other questions concerning this request or questions on the Choice Neighborhoods NOFA, please contact Ms. Caroline Clayton, at *Caroline.C.Clayton@hud.gov* or at 202–402–5461 (this is not a toll-free number). Persons with hearing or speech impairments may access these telephone numbers through a text telephone (TTY) by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

Dated: September 16, 2010.

Dominique Blom,

Deputy Assistant Secretary, Office of Public Housing Investments.

[FR Doc. 2010–23863 Filed 9–23–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–C–11]

Notice of Funding Availability for HUD's Fiscal Year (FY) 2010 Lead-Based Paint Hazard Control Grant Program and Lead Hazard Reduction Demonstration Grant Program; Technical Correction

AGENCY: Office of Healthy Homes and Lead Hazard Control, HUD.

ACTION: Notice of technical correction.

SUMMARY: On September 2, 2010, HUD posted on *http://www.Grants.gov* its Notice of Funding Availability (NOFA) for HUD's FY2010 Lead-Based Paint Hazard Control Grant Program and Lead Hazard Reduction Demonstration Grant Program. Today's **Federal Register** publication announces that HUD has posted on *http://www.Grants.gov* a technical correction that, among other things, corrects Appendix A of the NOFA. Appendix A of the NOFA inadvertently omitted listing three jurisdictions that are eligible to apply for the FY2010 Lead Hazard Reduction Demonstration NOFA. As a result, HUD is correcting Appendix A and establishing deadlines for the three affected eligible jurisdictions to submit an application and a waiver request to reduce the statutory match. HUD also posted an incorrect benchmark form for the FY2010 Lead Hazard Reduction Demonstration NOFA. As a result, HUD is extending the deadline for the submission of applications for other jurisdictions unaffected by the error in Appendix A. For jurisdictions eligible under the Lead-Based Paint Hazard Control Grant Program NOFA, there is no change to the deadline date for submission and timely receipt.

The revised Appendix A and revised benchmark form for the Lead Hazard Reduction Demonstration Grant Program NOFA can be found and downloaded from *http://www.grants.gov*, using the CFDA number for that program, 14.905.

DATES: For the jurisdictions added to Appendix A of the Lead Hazard Reduction Demonstration Program NOFA: The Deadline Date for Submission and Timely Receipt is 11:59:59 p.m. eastern time November 4, 2010. For these jurisdictions, the deadline for submitting the match waiver request is 5 p.m. eastern time October 13, 2010.

For all other jurisdictions eligible to apply for funding under the Lead Hazard Reduction Demonstration Program NOFA: The deadline for receipt of an application is extended from 11:59:59 p.m. eastern time October 15, 2010 to 11:59:59 p.m. eastern time October 22, 2010.

FOR FURTHER INFORMATION CONTACT: For information concerning the Lead-Based Paint Hazard Control Grant Program and Lead Hazard Reduction Demonstration Grant Program, contact Michelle Miller, Director, Programs Division, Office of Healthy Homes and Lead Hazard Control, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8236, Washington, DC 20410–3000; telephone number 202–402–5769 (this is not a toll-free number). Persons with speech or hearing impairments may access this telephone number via TTY by calling the toll-free Federal Relay Service during working hours at 800–877–8339.

Dated: September 17, 2010.

Jon L. Gant,

Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 2010–23864 Filed 9–23–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for Reporting System for Public Law 102–477 Demonstration Project; Request for Comments

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Indian Energy and Economic Development (IEED) is seeking comments on renewal of Office of Management and Budget (OMB) approval for the collection of information for the Reporting System for Public Law 102–477 Demonstration Project. The information collection is currently authorized by OMB Control Number 1076–0135, which expires September 30, 2010.

DATES: Interested persons are invited to submit comments on or before *October 25, 2010*.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an e-mail to: *OIRA_DOCKET@ omb.eop.gov.* Please send a copy of your comments to Lynn Forcia, Chief, Division of Workforce Development, Office of Indian Energy and Economic Development, 1849 C Street, NW., Mail Stop 2412 MIB, Washington, DC 20240; Telephone (202) 219–5270; E-mail *Lynn.Forcia@bia.gov.*

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the information collection request submission from Lynn Forcia, Chief, Division of Workforce Development (202) 219–5270.

SUPPLEMENTARY INFORMATION:

I. Abstract

IEED is seeking renewal of the approval for the information collection conducted under OMB Control Number 1076–0135, Reporting System for Public Law 102–477 Demonstration Project. This information collection allows IEED to document satisfactory compliance with statutory, regulatory, and other requirements of the various integrated programs. Public Law 102–477 authorizes tribal governments to integrate federally-funded employment, training, and related services and programs into a single, coordinated, comprehensive service delivery plan. Funding agencies include the Department of the Interior, Department of Labor, and the Department of Health and Human Services. Indian Affairs is statutorily required to serve as the lead agency and provides a single, universal report format for use by tribal governments to report on integrated activities and expenditures. IEED shares the information collected from these reports with the Department of Labor and the Department of Health and Human Services.

Approval for this collection expires September 30, 2010. There are forms associated with this collection. No third party notification or public disclosure burden is associated with this collection. There is no change to the approved burden hours for this information collection.

II. Request for Comments

IEED requests that you send your comments on this collection to the location listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of the information collection for the proper performance of the agencies, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or conduct, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section during the hours of 9 a.m.–5 p.m., Eastern Time, Monday through Friday except for legal holidays. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0135.

Title: Reporting System for Public Law 102–477 Demonstration Project.

Brief Description of Collection: Public Law 102–477 authorizes tribal governments to integrate federally-funded employment, training and related services programs into a single, coordinated, comprehensive delivery plan. Interior has made available a single universal format for Statistical Reports for tribal governments to report on integrated activities undertaken within their projects, and a single universal format for Financial Reports for tribal governments to report on all project expenditures. Respondents that participate in Temporary Assistance for Needy Families (TANF) must provide additional information on these forms.

Type of Review: Extension without change of a currently approved collection.

Respondents: Indian tribes participating in Public Law 102–477.

Number of Respondents: 65 grantees representing 265 Indian tribes.

Total Number of Responses: 230.

Frequency of Response: Each respondent must supply the information for the Financial Status Report and Public Law 102–477 Demonstration Project Statistical Report once. Approximately 35 of the respondents participant in TANF and must also provide information associated with that program.

Estimated Time per Response: Ranges from 2 to 40 hours.

Estimated Total Annual Hour Burden: 3,840 hours.

Estimated Total Annual Non-Hour Cost Burden: $325.

Dated: September 20, 2010.

Alvin Foster,

Acting Chief Information Officer—Indian Affairs .

[FR Doc. 2010–23913 Filed 9–23–10; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Northwest Museum of Arts & Culture, Spokane, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Northwest Museum of Arts & Culture, aka Eastern Washington State Historical Society, Spokane, WA, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The funerary objects described below were excavated by Donald Collier, Alfred E. Hudson and Arlo Ford due to the construction of the Grand Coulee Dam and its reservoir (Lake Roosevelt) whose waters would soon cover the area. This undertaking was known as "The Columbian Basin Archaeological Survey" or the "Collier, Hudson, and Ford Project." It was a multi-institutional venture involving the Eastern Washington State Historical Society (now Northwest Museum of Arts & Culture), University of Washington, and the State College of Washington (now Washington State University). It was also a multi-agency venture involving the Bureau of Reclamation, Bureau of Indian Affairs, Civilian Conservation Corps, and the Works Project Administration (including the National Youth Administration). In 1940, the Eastern Washington State Historical Society became the repository for the collection, as mandated by the Bureau of Reclamation. Portions of the land from which the funerary objects derive were non-Federal lands, and other portions were Federal lands at the time of removal. Moreover, the Federal lands fell under the management authority of several different agencies. Consequently, there has been a question of control over the collection. After several years of research, the Northwest Museum of Arts & Culture has been unable to determine additional specifics regarding the control of each site. Therefore, absent additional information, the Northwest Museum of Arts & Culture is assuming responsibility under NAGPRA with regard to publishing this Notice and repatriating the unassociated funerary objects to the culturally affiliated tribe.

During the period July 1939 - September 1940, funerary objects were systematically removed from Site 2 (45–LI–27), Lincoln County, WA, by Donald Collier, Alfred E. Hudson and Arlo Ford due to the construction of the Grand Coulee Dam and its reservoir (Lake Roosevelt), and they were accessioned by the museum in 1940 (EWSHS Accession ι1027). The three unassociated funerary objects are one abalone pendant and two projectile points.

During the period July 1939 - September 1940, funerary objects were systematically removed from Site 7A (45–FE–7), Ferry County, WA, by Collier, Hudson and Ford due to the construction of the Grand Coulee Dam and its reservoir (Lake Roosevelt), and they were accessioned by the museum in 1940 (EWSHS Accession #1027). The 42 unassociated funerary objects are 7 beaver tooth dice, 1 bone awl pendant, 27 dentalia beads, 4 copper pendants, 1 copper bracelet, 1 projectile point and 1 bone awl.

During the period July 1939 - September 1940, funerary objects were systematically removed from Site 24 (45–FE–24), Ferry County, WA, by Collier, Hudson and Ford due to the construction of the Grand Coulee Dam and its reservoir (Lake Roosevelt), and they were accessioned by the museum in 1940 (EWSHS Accession #1027). The 92 unassociated funerary objects are 7 wooden burial markers , 1 dentalia fragment, 5 glass beads, 9 perforated bear claws, 1 carved beaver tooth, 3 copper bells, 1 lot of burial fill, 22 dentalia beads, 2 buckskin or leather fragments, 2 antler digging sticks, 1 abalone shell pendant, 2 scrapers, 2 bone awls, 1 piece of matting, 1 flake, 2 dentalia necklace fragments, 1 small box of dentalia beads, 1 bone needle, 1 copper pendant, 18 rolled copper beads, 6 dentalium, 1 piece of cordage, 1 long jadeite celt and 1 chipped flint fragment.

During the period July 1939 - September 1940, funerary objects were systematically removed from Site 46 (45–Stevens–46), Stevens County, WA, by Collier, Hudson and Ford due to the construction of the Grand Coulee Dam and its reservoir (Lake Roosevelt), and they were accessioned by the museum in 1940 (EWSHS Accession #1027). The 78 unassociated funerary objects are 6 pieces worked bone, 1 jadeite chip, 1 jadeite celt, 44 bone implements, 3 stone pipes, 3 projectile points, 3 schist scrapers, 1 mussel shell, 1 antler wedge, 1 slate needle, 1 slate pendant, 1 pipe fragment, 1 bone awl, 1 slate object, 1 lot of turgite paint material, 1 arrow shaft smoother, 2 hematite pieces, 3 knives, 1 spear point, 1 antler and 1 antler horn implement.

During the period July 1939 - September 1940, funerary objects were systematically removed from Site 47 (45–ST–47), Stevens County, WA, by Collier, Hudson and Ford due to the construction of the Grand Coulee Dam and its reservoir (Lake Roosevelt), and they were accessioned by the museum in 1940 (EWSHS Accession #1027). The 64 unassociated funerary objects are 1 copper bracelet, 7 projectile points, 6 bone combs, 1 bone implement, 1 bone spearpoint, 2 bone whistles, 27 bone awls, 2 copper and shell pendants, 1 spear point, 1 carved stone pipe, 1 jadeite celt, 1 jadeite adze, 2 bone ornaments (possible combs), 1 bone flute fragment, 1 coiled basket, 1 turquoise pendant, 1 dentalia, 2 abalone pendants, 3 glass beads and 1 arrow shaft smoother.

The unassociated funerary objects described above are consistent with cultural items typically found in context with Native American burials in eastern Washington State. Furthermore, accession numbers, as well as field notes and journal entries, indicate that the cultural items were found in connection with human remains. Extensive museum documentation, the geographic locations of the sites, burial patterns, and consultation from the Confederated Tribes of the Colville Indian Reservation, Washington, verify that the cultural items were removed from sites that are within the aboriginal territory of the bands of Indians that now make up the Confederated Tribes of the Colville Indian Reservation, Washington.

Officials of the Northwest Museum of Arts & Culture have determined that, pursuant to 25 U.S.C. 3001(3)(B), the 279 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Northwest Museum of Arts & Culture also have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes of the Colville Indian Reservation, Washington.

Representatives of any other Indian tribe that believe themselves to be culturally affiliated with the unassociated funerary objects should contact Mr. Michael Holloman, Northwest Museum of Arts & Culture, Spokane, WA 99201, telephone (509) 363–5337, before October 25, 2010. Repatriation of the unassociated funerary objects to the Confederated Tribes of the Colville Indian Reservation, Washington, may proceed after that date if no additional claimants come forward.

The Northwest Museum of Arts & Culture is responsible for notifying The Confederated Tribes of the Colville Indian Reservation, Washington, that this notice has been published.

Dated: September 10, 2010

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–23921 Filed 9–23–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the American Museum of Natural History, New York, NY, that meets the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

In 1902, human remains representing a minimum of one individual were collected by Dr. Ales Hrdlicka from a cave in the vicinity of Sacaton, Pinal County, AZ, while Dr. Hrdlicka was a member of the Hyde Expedition, sponsored by the American Museum of Natural History. No

known individual was identified. This individual has been identified as Native American based on the American Museum of Natural History's catalog entry describing the remains as a "Pima ... medicine man." The two associated funerary objects were a pair of metal spurs.

In 2006, the human remains and the metal spurs were repatriated to the Gila River Indian Community. Subsequently, the American Museum of Natural History discovered among its collections additional funerary objects associated with this repatriated individual, but not previously reported. Therefore, these additional funerary objects are now considered to be unassociated. The 32 unassociated funerary objects are elements of 1 percussion musket (a barrel and trigger and a percussion lock); 1 leather bullet pouch and its contents (12 metal ball bullets, 3 spent percussion caps, 1 shell casing, 3 glass marbles, 1 piece of cloth and 1 lot of paper scraps); 1 metal flask; 1 teacup; 1 saucer; 1 pressed metal spoon; 2 blue glass beads; 2 claws and 1 piece of sewn rawhide.

The metal flask is painted green and has a knotted cloth plug. The tea cup and saucer are white glazed ceramic. The two beads are made of blue glass. The two claws are from a jaguar. The rawhide piece is sewn with a rawhide thong.

The geographic location is consistent with the post-contact territory of the Pima, who are represented by the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; the Gila River Indian Community of the Gila River Indian Reservation, Arizona; and the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona. The presence of items such as metal spurs, a rifle and white ceramic teacup suggest a post-contact date for this burial.

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001(3)(B), the 32 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001(2), there is a shared group identity that can be traced between the unassociated funerary objects and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; and Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th St., New York, NY 10024, telephone (212) 769–5837, before October 25, 2010. Repatriation of the unassociated funerary objects to the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; and Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona, may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; and Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona, that this notice has been published.

Dated: September 10, 2010

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–23933 Filed 9–23–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Thomas Gilcrease Institute of American History and Art, Tulsa, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Thomas Gilcrease Institute of American History and Art (Gilcrease Museum), Tulsa, OK, that meet the definition of objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The nine cultural items are Waxo'be bundles belonging to the Osage people. The bundles were part of the Emil Lenders Collection that was brought to the Gilcrease Museum during the early half of the 20th Century. The bundles were part of a sizeable collection of Native American artifacts acquired by the Gilcrease Museum for the preservation of North American history.

The first bundle is made of buckskin with a scalp lock and twisted wool that are seen from the open end (84.1749). The second bundle has a long buckskin strap for an Osage War bundle that has an eagle foot and human scalp attached (84.1750 a-h). The third bundle is made with a wrapped buckskin strap that ties a woven buffalo hair bag with eagle foot and human scalp attached (84.1751 a-i). The fourth bundle is made of buckskin and laced at the ends with buckskin thongs, buckskin tying strap, and a woven inner bag (84.1753 a-b). The fifth bundle is made of buckskin and contains a partially woven inner bag and woven buffalo hair bag and tied with two leather thongs (84.1754). The sixth bundle has an outer strip and an outer bag, as well as two inner bags, and a buckskin strap for tying prisoners (84.1757 a-i). The seventh bundle has an outer bag of woven buffalo hair with an inner bag made of buckskin with a woven mat inside (84.1759). The outer strap has animal hair and human scalp locks on buckskin with a rawhide ring tied on the bundle with calico. The eighth bundle has an outer covering of woven matting with borders of natural, black and red eagle quills (84.1761). The ninth bundle has an outer bag of woven buffalo hair with an inner bag of buckskin and woven mat inside. The outer strap is animal hair and human scalp locks on buckskin (84.1762).

Waxo'be bundles and their components have on-going historical and cultural importance to the Osage people. They are also owned by the Osage people and not by any single individual. In the past, bundles and their components were the central symbolic elements of ceremonies related to Osage cosmology, the traditional religion practiced before adoption of the Native American Church by the Osage. While these specific ceremonies related to Osage cosmology are no longer practiced today, bundles and their components continue to hold immense spiritual significance and sacred power for the Osage people requiring protection of these objects and extremely limited exposure.

Officials of the Gilcrease Museum have determined that, pursuant to 25 U.S.C. 3001(3)(D), the nine cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Officials of the Gilcrease Museum also have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the objects of cultural patrimony and the Osage Nation, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the objects of cultural patrimony should contact Dr. Duane H. King, Executive Director, or Eric Singleton, Assistant Curator of Anthropology, Gilcrease Museum, 1400 N. Gilcrease Museum Rd., Tulsa, OK 74127, telephone (918) 596–2793 before October 25, 2010. Repatriation of the objects of cultural patrimony to the Osage Nation, Oklahoma, will proceed after that date if no additional claimants come forward.

The Gilcrease Museum is responsible for notifying the Osage Nation, Oklahoma, that this notice has been published.

Dated: September 10, 2010

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–23930 Filed 9–23–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: The Colorado College, Colorado Springs, CO; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves

Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of The Colorado College, Colorado Springs, CO. The human remains and associated funerary objects were removed from sites in the southwestern United States and a canyon tributary of Comb Wash, San Juan County, UT.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the citation to a previously published Notice of Inventory Completion contained in a correction Notice of Inventory Completion that was published in the **Federal Register** (74 FR 42105–42106, August 20, 2009). The citation (72 FR 19920, April 14, 2004) should read (69 FR 19232–19233, April 12, 2004).

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects described in the Notices of April 12, 2004, and August 20, 2009, should contact Chris Melcher, General Counsel, The Colorado College c/o Jan Bernstein, President, Bernstein & Associates - NAGPRA Consultants, 1041 Lafayette St., Denver, CO 80218, telephone (303) 894–0648, janbernstein@nagpra.info, before October 25, 2010. Repatriation of the human remains and associated funerary objects to the Hopi Tribe of Arizona may proceed after that date if no additional claimants come forward.

The Colorado College is responsible for notifying the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico, that this notice has been published.

Dated: September 10, 2010

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–23919 Filed 9–23–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Office of the State Archaeologist, Lansing, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Office of the State Archaeologist (formerly the Michigan Historical Center), Lansing, MI. The human remains were removed from the vicinity of Scott Point, Mackinac County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Michigan Office of the

State Archaeologist professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Kickapoo Traditional Tribe of Texas; Lac Courte Oreilles Band of Lake Superior Chippewa Indians, Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Nottawaseppi Huron Band of the Potawatomi, Michigan (formerly the Huron Potawatomi, Inc.); Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band of Potawatomi Nation, Kansas; Quechan Tribe of the Fort Yuma Indian Reservation, California and Arizona; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians of Michigan; Shawnee Tribe, Oklahoma; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; White Earth Band of the Minnesota Chippewa Tribe, Minnesota; Wyandotte Nation, Oklahoma; and the Scott Point Tribe of American Aboriginals, a non-federally recognized Indian group. Consultation included all tribes whose aboriginal lands once included Mackinac County, MI, as identified in the "Present-Day Tribes Associated with Indian Land Cessions 1784–1894" database on the National Park Service's National NAGPRA website.

In 1993, human remains representing a minimum of three individuals were removed from the surface of 20MK450, Mackinac County, MI, by Marla Buckmaster, professor of anthropology at Northern Michigan University, to curtail the damage being caused to them. The bones were reported to Dr. Buckmaster after they were exposed by erosion resulting from off-road vehicle use that resulted in the bones being visible on the surface. After removal, Dr. Buckmaster reported the matter to local police and then transferred the remains to the Office of the State Archaeologist. Examination of plat books and consultation with the Department of Natural Resources Office of Land and Facilities yielded a determination that the Native American human remains were found on land owned by the Michigan Department of Natural Resources. No known individuals were identified. No associated funerary objects are present.

The bones were examined by physical anthropologist David Barondess of Michigan State University, but the condition of the bones did not allow for a definitive identification of ethnicity. However, the burial practices, great age of the bones suggested by their condition, and lack of either coffin hardware or historic-era clothing all suggest a pre-contact period date and Native American identity for these individuals. It is possible, but not certain, that the burials may be related to the nearby Scott Point site (20MK22), which was occupied at various times over the past 2,000 years by a number of Woodland period cultural groups.

Officials of the Office of the State Archaeologist have determined that, pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.

The Office of the State Archaeologist had been in informal consultation with the Scott Point Tribe of American Aboriginals, a non-federally recognized Indian group, concerning the human remains from 20MK450. Members of this group are enrolled with the federally-recognized Sault Ste. Marie Tribe of Chippewa Indians. The Sault Ste. Marie Tribe of Chippewa Indians, working closely with the Scott Point Tribe of American Aboriginals on this matter, entered into consultation with the Office of the State Archaeologist. On March 31, 2010, the Sault Ste. Marie Tribe of Chippewa Indians formally requested disposition of the human remains. Letters supporting disposition to the Sault Ste. Marie Tribe of Chippewa Indians were received from the Bay Mills Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians (Ketegitigaaning Ojibwe Nation), Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Little Traverse Bay Bands of Odawa Indians, Michigan; and the Peoria Tribe of Indians of Oklahoma. The Delaware Nation determined that site 20MK450 was not within their area of interest. No letters were received in opposition to the proposed disposition, and no letters were received citing any other concerns. Therefore, officials of the Office of the State Archaeologist have offered the disposition of the human remains from site 20MK450 to the Sault Ste. Marie Tribe of Chippewa Indians of Michigan, as an aboriginal land tribe.

Officials of the Office of the State Archaeologist have determined that, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of three individuals of Native American ancestry. Lastly, officials of the Office of the State Archaeologist have determined that, pursuant to 43 CFR 10.11(c)(1), the disposition of the Native American human remains is to the Sault Ste. Marie Tribe of Chippewa Indians of Michigan.

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact Barbara Mead, Office of the State Archaeologist, P.O. Box 30740, 702 West Kalamazoo St., Lansing, MI 48909–8240, telephone (517) 373–6416, before October 25, 2010. Disposition of the human remains to the Sault Ste. Marie Tribe of Chippewa Indians of Michigan may proceed after that date if no additional requestors come forward.

The Office of the State Archaeologist is responsible for notifying the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Kickapoo Traditional Tribe of Texas; Lac Courte Oreilles Band of Lake Superior Chippewa Indians, Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Nottawaseppi Huron Band of the Potawatomi, Michigan; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band of Potawatomi Nation, Kansas; Quechan Tribe of the Fort Yuma Indian Reservation, California and Arizona; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians of Michigan; Shawnee Tribe, Oklahoma; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; White Earth Band of the Minnesota Chippewa Tribe, Minnesota; Wyandotte Nation, Oklahoma; and the Scott Point Tribe of American Aboriginals, a non-federally recognized Indian group, that this notice has been published.

Dated: September 10, 2010

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–23902 Filed 9–23–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Athens County Historical Society and Museum, Athens, OH

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Athens County Historical Society and Museum, Athens, OH. The human remains were removed from Athens County, OH.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Ohio University and the Athens County Historical Society and Museum professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma; Delaware Nation, Oklahoma; and Eastern Shawnee Tribe of Oklahoma.

In 1988, human remains representing a minimum of one individual were removed from the Coe Family Farm on Armitage Road, in Athens County, OH. On January 4, 2010, the human skull was found in a hatbox in the collections storage. According to a former museum curator, the human remains were removed by an Ohio University professor who considered himself an amateur archeologist. No known individual was identified. No associated funerary objects are present.

According to Dr. Nancy Tatarek, a forensic anthropologist from Ohio University, the wear and coloration of the skull indicated that it was at least 300+ years old. Dr. Tatarek used the shape of the nose cavity to identify cultural background. On a reasonable basis, the human remains may be Native American, and possibly female. Furthermore, there were no white settlements in the Athens County area 300 years ago.

Based on Indian land claims maps, the museum has determined the human remains have a shared group relationship with the Shawnee, which are represented by the Absentee-Shawnee Tribe of Indians of Oklahoma, Eastern Shawnee Tribe of Oklahoma and Shawnee Tribe, Oklahoma. Based on consultation, the museum has reasonably determined the human remains also have a shared group relationship with the Delaware, which are represented by the Delaware Nation, Oklahoma, and Delaware Tribe of Indians of Oklahoma.

Officials of the Athens County Historical Society and Museum have determined that, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Athens County Historical Society and Museum also have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Absentee-Shawnee Tribe of Indians of Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians of Oklahoma; Eastern Shawnee Tribe of Oklahoma; and Shawnee Tribe, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Heather Reed, Curator/Education Coordinator, Athens County Historical Society and Museum, 65 N. Court St., Athens, OH 45701, telephone (740) 592–2280, before October 25, 2010. Repatriation of the human remains to the Absentee-Shawnee Tribe of Indians of Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians of Oklahoma; Eastern Shawnee Tribe of Oklahoma; and Shawnee Tribe, Oklahoma, may proceed after that date if no additional claimants come forward.

Athens County Historical Society and Museum is responsible for notifying the Absentee-Shawnee Tribe of Indians of Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians of Oklahoma; Eastern Shawnee Tribe of Oklahoma; and the Shawnee Tribe, Oklahoma, that this notice has been published.

Dated: September 10, 2010.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–23904 Filed 9–23–10; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Northwest Museum of Arts & Culture, Spokane, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Northwest Museum of Arts & Culture, aka Eastern Washington State Historical Society, Spokane, WA. The human remains and associated funerary objects were removed from Lincoln, Ferry and Stevens Counties, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has possession of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Northwest Museum of Arts & Culture professional staff in consultation with representatives of the Confederated Tribes of the Colville Indian Reservation, Washington.

During the period July 1939 to September 1940, human remains and associated funerary objects were removed from seven different sites in Lincoln, Ferry and Stevens Counties, WA, encompassing a vast, 150-mile area. The human remains and associated funerary objects described below were excavated by Donald Collier, Alfred E. Hudson and Arlo Ford due to the construction of the Grand Coulee Dam and its reservoir (Lake Roosevelt), whose waters would soon cover the area. This undertaking was known as "The Columbian Basin Archaeological Survey" or the "Collier, Hudson, and Ford Project." It was a multi-institutional venture involving the Eastern Washington State Historical Society (now Northwest Museum of Arts & Culture), University of Washington, and the State College of Washington (now Washington State University). It was also a multi-agency venture involving the Bureau of Reclamation, Bureau of Indian Affairs, Civilian Conservation Corps, and the Works Project Administration (including the National Youth Administration). In 1940, the Eastern Washington State Historical Society became the repository for the collection, as mandated by the Bureau of Reclamation. Portions of the land from which the human remains and associated funerary objects derive were non-Federal lands, and other portions were Federal lands at the time of removal. Moreover, the Federal lands fell under the management authority of several different agencies. Consequently, there has been a question of control over the collection. After several years of research, the Northwest Museum of Arts & Culture has been unable to determine additional specifics regarding the control of each site. Therefore, absent additional information, the Northwest Museum of Arts & Culture is assuming responsibility under NAGPRA with regard to publishing this Notice and repatriating the human remains and associated funerary objects to the culturally affiliated tribe.

From 1940 until 1951, the Northwest Museum of Arts & Culture was the repository for the recovered materials. On February 24, 1951, the museum agreed to loan the human remains to the Washington State Museum of the University of Washington for scientific study. According to letters substantiating the agreement, all the human remains borrowed by the University of Washington were returned to the museum on May 29, 1951, and were repatriated to the Confederated Tribes of the Colville Indian Reservation, Washington, in 1979.

Unfortunately, the repatriation in 1979 was incomplete. In December 1994, the Thomas Burke Memorial Museum at the University of Washington (formerly Washington State Museum) informed the Northwest Museum of Arts & Culture that they had found five boxes of skeletal material thought to be related to the 1951 loan agreement. In addition, during the time between 1951 and 1995, the human remains were the subject of additional transfers to various institutions. However, the human remains were retrieved and returned to Northwest Museum of Arts & Culture between June 15, 1995 and November 5, 1995. This Notice includes the human remains and associated funerary objects from the seven sites currently in the collection of the Northwest Museum of Arts & Culture.

Human remains representing a minimum of nine individuals were removed from Site 2 (45–LI–27), opposite the mouth of the Sanpoil, in Lincoln County, WA. No known individuals were identified. The 11 associated funerary objects are 1 basalt piece, 1 bone awl, 1 unworked and worked cache form, 1 scraper, 1 pestle, 1 blade fragment, 1 piece of wood, 3 projectile points and 1 knife.

Human remains representing a minimum of nine individuals were removed from Site 7A (45–FE–7), in Ferry County, WA. No known individuals were identified. The eight associated funerary objects are two rusted iron fragments and six dentalia shell beads.

Human remains representing a minimum of nine individuals were removed from Site 7B (45–FE–7), a half mile up the bank of the Columbia from Site 7A, in Ferry County, WA. No known individuals were identified. The 52 associated funerary objects are 35 blue glass beads and 17 white glass beads.

Human remains representing a minimum of three individuals were removed from Site 13 (45–FE–13), in Ferry County, WA. No known individuals were identified. No associated funerary objects are present.

Human remains representing a minimum of one individual were removed from Site 21 (45–FE?–21, an unknown area, but most likely in Ferry County, WA. No known individual was identified. No associated funerary objects are present.

Human remains representing a minimum of 27 individuals were removed from Site 24 (45–FE–24), in Ferry County, WA. No known individuals were identified. The 497 associated funerary objects are 2 arrow shaft smoothers, 1 bone harpoon, 1 bone awl, 2 knives, 6 projectile points, 1 string of copper bone beads, 100 dentalia (11 of which are dentalia beads), 1 clam shell disc bead, 7 rolled copper beads, 1 hand maul, 4 bear penis bones, 2 gravers, 13 perforated elk teeth, 1 abalone gorget, 6 copper pendants, 5 worked bone fragments, 1 copper bracelet, 1 rectangular perforated copper plate, 52 olivellae, 2 antler digging sticks, 270 glass beads, 1 shell bead, 14 sets of wooden burial marker sacks and 3 sets of "fill-over burial" sacks.

Human remains representing a minimum of three individuals were removed from Site 31 (45–ST–31), one-quarter of a mile above the Gifford-Inchelium ferry landing, in Stevens County, WA. No known individuals were identified. No associated funerary objects are present.

Extensive historic documentation—original maps, journal entries, field notes, newspaper articles, professional journal publications, and *Archaeology of the Upper Columbia Region,* published by Donald Collier, Alfred E. Hudson, and Arlo Ford in 1942, and detailing their findings of the original excavation—and documented burial practices, associated funerary object typology (both pre and post-contact), and three in-depth osteological studies, all confirm that the human remains are Native American.

Based on the geographic location of the sites, the anthropological analyses of the human remains, such as dental attrition and cranial deformation, and structural remnants found at the sites (pit and earth ovens), it is determined that the human remains and associated funerary objects are representative of Plateau Native Culture. The seven sites fall within the traditional aboriginal territory of the bands of Indians (Wenatchee, Nespelem, Moses-Columbia, Colville, Okanagan, Palus, San Poil, Entiat, Chelan, Lake, and Chief Joseph's Band of the Nez Perce) that now comprise the Confederated Tribes of the Colville Indian Reservation, Washington, who were confederated in 1872. Further, the types of burial practices (*i.e.* pit inhumations and talus slopes) and funerary objects (including large amounts of copper), tribal oral tradition, and extensive historic documentation of the original excavation, all show that the human remains and associated funerary objects have direct ancestral ties to the bands of Indians that are now represented by the Confederated Tribes of the Colville Indian Reservation, Washington.

Officials of the Northwest Museum of Arts & Culture have determined that, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of 61 individuals of Native American ancestry. Officials of the Northwest Museum of Arts & Culture also have determined that, pursuant to 25 U.S.C. 3001(3)(A), the 568 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Northwest Museum of Arts & Culture have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes of the Colville Indian Reservation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Mr. Michael Holloman, Northwest Museum of Arts & Culture, 2316 West First Ave., Spokane, WA 99201, telephone (509) 363–5337, before October 25, 2010. Repatriation of the human remains and associated funerary objects to the Confederated Tribes of the Colville Indian Reservation, Washington, may proceed after that date if no additional claimants come forward.

The Northwest Museum of Arts & Culture is responsible for notifying the Confederated Tribes of the Colville Indian Reservation, Washington, that this notice has been published.

Dated: September 10, 2010.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–23926 Filed 9–23–10; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Montana, Missoula, MT

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and an associated funerary object in the possession of the University of Montana, Missoula, MT. The human remains and associated funerary object were removed from a location in western Montana and Missoula County, MT.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary object. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by University of Montana, Department of Anthropology, professional staff in consultation with representatives of the Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana.

In 1950, human remains representing a minimum of one individual were removed from a location in western Montana. According to a slip of paper in the box with the human remains, the burial was recovered from under a conical rock mound and appeared to be a secondary burial of disarticulated bones and excavated by a University of Montana archeological team, led by Carling Malouf. The slip of paper also indicates that the burial was excavated from a site "located a few yards away from those found earlier by Turney-High and White." No known individual was identified. No associated funerary objects are present.

Harry H. Turney-High and Thain White were known to excavate in western Montana in the vicinity of the Flathead Reservation where White owned property; therefore, museum officials reasonably believe that these remains are from western Montana and from White's private property on the Flathead Reservation. This region was occupied prehistorically and historically by the Salish and Kootenai tribes.

In 1952, human remains representing a minimum of two individuals were removed from the University of Montana campus, Missoula County, MT. The remains were excavated by Carling Malouf. No known individuals were identified. The one associated funerary object is a set of glass beads.

The set of beads - colors, size, manufacture and shape - provide both a temporal period and cultural affiliation. According to archeologist W. Mark Timmons, dyed beads were manufactured starting in 1850 and the wide use of dyed beads peaked in the 1880s. The remaining beads in the collection appear to be of an older origin, and when compared with the beads recovered from the Saleesh House excavations they seem similar in size, color, and manufacture. Considering that the Saleesh House operated by Salish Tribal members until the early 1850s, and the presence of only a few dyed beads in the assemblage, a burial date in the range of the 1860s to the 1870s would seem to be a reasonable inference. In addition, a tribal representative has identified Missoula County, MT, as part of the Salish and Kootenai tribes traditional occupation area. This region was occupied prehistorically and historically by Salish and Kootenai tribes.

Officials of the University of Montana have determined that, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of three individuals of Native American ancestry. Officials of the University of Montana also have determined that, pursuant to 25 U.S.C. 3001(3)(A), the one object described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Montana have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary object and the Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and/or associated funerary object should contact John Douglas, Chair and Professor, Department of Anthropology, University of Montana, 32 Campus Dr., Missoula, MT 39812, telephone (406) 243–4246, before October 25, 2010. Repatriation of the human remains and associated funerary object to the Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana, may proceed after that date if no additional claimants come forward.

The University of Montana is responsible for notifying the Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana, that this notice has been published.

Dated: September 10, 2010

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–23915 Filed 9–23–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains were removed from the Trudeau Site in West Feliciana Parish, LA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of individuals reported in a Notice of Inventory Completion published in the **Federal Register** (66 FR 51464, October 9, 2001) from four to seven individuals. These additional individuals were found during the Peabody Museum's ongoing inventory process since the publication of the original notice.

In the **Federal Register**, paragraph number 2, page 51464, is corrected by substituting the following paragraph:

In 1972, individuals representing seven individuals were collected from the Trudeau site in West Feliciana Parish, LA, by Jeffrey P. Brain as part of the Lower Mississippi Survey expedition. The Lower Mississippi Survey was a project of Harvard University faculty in 1972. No known individuals were identified. No associated funerary objects are present.

In the **Federal Register**, paragraph number 4, page 51464, is corrected by substituting the following paragraph:

Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001(9), the human remains represent the physical remains of seven individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can reasonably be traced between the Native American human remains and the Tunica-Biloxi Indian Tribe of Louisiana.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Ave., Cambridge, MA 02138, telephone (617) 496–3702, before October 25, 2010. Repatriation of the human remains to the Tunica-Biloxi Indian Tribe of Louisiana may proceed after that date if no additional claimants come forward.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying the Tunica-Biloxi Indian Tribe of Louisiana that this notice has been published.

Dated: September 10, 2010

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–23906 Filed 9–23–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Army Corps of Engineers, Portland District, Portland, OR and University of Oregon Museum of Natural and Cultural History, Eugene, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects for which the University of Oregon Museum of Natural and Cultural History, Eugene, OR, and U.S. Department of Defense, Army Corps of Engineers, Portland District, Portland, OR, have joint responsibility. The human remains and associated funerary objects were removed from a site on Army Corps of Engineers land within the John Day Dam project area, Gilliam County, OR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the University of Oregon Museum of Natural and Cultural History and U.S. Army Corps of Engineers, Portland District, professional staff in consultation with representatives of the Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; and Nez Perce Tribe, Idaho.

Native American cultural items described in this notice were excavated under Antiquities Act permits by the University of Oregon, Eugene, OR, on Army Corps of Engineers project land. Following excavations at the site described below, and under the provisions of the permits, the University of Oregon retained the collections for preservation.

Between 1959 and 1968, human remains representing a minimum of 134 individuals were removed from site 35–GM–9, also known as the Wildcat Canyon site, Gilliam County, OR, during excavations by the University of Oregon prior to construction of the John Day Dam. No known individuals were identified. The 1,182 associated funerary objects are 41 projectile points, 8 projectile point fragments, 2 chert bifacial tips, 6 stone knives, 2 knife fragments, 17 blades, 14 blade fragments, 3 crude chert bifaces, 1 bifacially-modified obsidian crescent, 19 scrapers, 4 utilized flakes, 41 worked flakes, 2 cores, 1 worked shale piece, 4 shaft smoothers, 3 abrading stones, 8 gravers, 1 burin, 1 needle, 1 chert drill, 3 choppers, 2 hopper mortars, 2 net sinkers, 4 hammerstones, 3 stone mauls, 5 pestles, 2 large pestle fragments, 84 basalt fragments, 3 chert fragments, 663 unmodified flakes, 1 thermally-fractured rock, 2 columnar slabs, 1 fractured cobble, 1 flaked cobble, 1 stone pendant, 1 stone ring, 5 round stones, 1 girdled stone, 2 pierced stones, 49 pebbles, 1 girdled pebble, 9 broken pebbles, 1 worked scoria piece, 34 dentalium shells, 1 pectin shell, 1 incised bead, 8 steatite beads, 12 bone beads, 3 vials of bone beads, 4 fossil crinoid beads, 10 stone beads, 3 unspecified beads, 21 worked antlers/fragments, 2 vials of antler/bone, 1 vial of elk teeth, 2 faunal effigies, 2 awls, 1 bone tube fragment, 16 worked non-human bones/fragments, 18 non-human bones/fragments, 11 burned non-human bone fragments, 6 red ochre pieces, and 1 green chalk piece.

Site 35–GM–9 is located along the south side shoreline of the Columbia River, approximately 9.5 river miles east of the John Day River confluence. The multicomponent site contains multiple activity areas that are believed to have been repeatedly occupied from approximately 9,000 B.P. to A.D. 1750. Site 35–GM–9 frequently served as a village, camping area and cemetery. Based on distinctive osteological evidence, the associated funerary objects and the location of the human remains within the site, all the individuals have been determined to be Native American.

Oral traditions and ethnographic reports indicate that site 35–GM–9 lies within the historic territory of Sahaptin-speaking Tenino or Warm Springs peoples whose descendants are culturally-affiliated with the present-day Confederated Tribes of the Warm Springs Reservation of Oregon. The Confederated Tribes of the Warm Springs Reservation is composed of three Wasco bands, four Warm Springs bands, and Northern Paiutes. The Columbia River-based Wasco were the easternmost group of Chinookan-speaking Indians. The Sahaptin-speaking Warm Springs bands lived farther east along the Columbia River and its tributaries. Northern Paiutes, who spoke a Uto-Aztecan language, historically occupied much of southeastern Oregon. The Confederated Tribes of the Warm Springs Reservation of Oregon peoples also traditionally shared the site area with relatives and neighbors whose descendants may be culturally affiliated with the 14 Sahaptin, Salish and Chinookan-speaking tribes and bands of the present-day Confederated Tribes and Bands of the Yakama Nation, Washington. Yakama homelands were traditionally located on the Washington side of the Columbia River between the eastern flanks of the Cascade Range and the lower reaches of the Yakima River drainage.

Officials of the U.S. Army Corps of Engineers, Portland District, and University of Oregon Museum of Natural and Cultural History, have determined that, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of at least 134 individuals of Native American ancestry. Officials of the U.S. Army Corps of Engineers, Portland District, and University of Oregon Museum of Natural and Cultural History, have also determined that, pursuant to 25 U.S.C. 3001(3)(A), the 1,182 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the U.S. Army Corps of

Engineers, Portland District, and University of Oregon Museum of Natural and Cultural History, have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes of the Warm Springs Reservation of Oregon and/or Confederated Tribes and Bands of the Yakama Nation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Daniel Mulligan, NAGPRA Coordinator, Environmental Resources Branch, U.S. Army Corps of Engineers, Portland District, P.O. Box 2946, Portland, OR 97208–2946, telephone (503) 808–4768, before October 25, 2010. Repatriation of the human remains and associated funerary objects to the Confederated Tribes of the Warm Springs Reservation of Oregon and/or Confederated Tribes and Bands of the Yakama Nation, Washington, may proceed after this date if no additional claimants come forward.

The U.S. Army Corps of Engineers, Portland District, is responsible for notifying the Confederated Tribes of the Warm Springs Reservation of Oregon and Confederated Tribes and Bands of the Yakama Nation, Washington, that this notice has been published.

Dated: September 10, 2010

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–23903 Filed 9–23–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Brigham Young University, Museum of Peoples and Cultures, Provo, UT

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Brigham Young University, Museum of Peoples and Cultures, Provo, UT. The human remains and associated funerary objects were removed from Kane and San Juan Counties, UT.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Between 1993 and 1996, a detailed assessment of the human remains and associated funerary objects was made by the Brigham Young University, Museum of Peoples and Cultures, professional staff in consultation with representatives of the Hopi Tribe of Arizona; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

At an unknown date, human remains representing a minimum of 23 individuals were removed from four unidentified caves in San Juan County, UT. Between 1893 and 1894, Mr. Charles Lang and Mr. Platte Lyman donated the human remains to the Deseret Museum, Salt Lake City, UT, which was later incorporated into the Church History Museum of the Church of Jesus Christ of Latter-day Saints in Salt Lake City, UT. The collection became known as the Lang-Lyman Collection, and was acquired by the Museum of Peoples and Cultures through museum transfers in 1966 and 1995, and accessioned (Catalog Nos. 1966.55.1.1, 1966.56.1.1, 1966.57.2.1, 1966.57.3.1. 1966.57.7.1, 1966.58.1.0, 1966.58.2.0, 1966.58.3.1, 1966.58.4.1, 1966.58.5.1, 1966.58.5.2, 1966.58.6.1, 1966.58.7.1, 1966.58.8.1, 1966.58.9.1, 1966.58.10.1, 1966.59.1.1, 1966.60.1.1, 1966.61.1.1, 1966.62.1.1, 1966.62.2.1, 1966.62.4.0, and 1966.64.01.1). No known individuals were identified. The 127 associated funerary objects are 1 spear, 1 small spear, 9 sandals, 6 animal skins, 1 net bag, 1 net, 5 atlatl darts, 2 feathered blankets, 2 buckskin pouches, 8 baskets, 1 piece of leather, 1 moccasin, 1 pipe, 1 onyx pipe bowl, 14 turkey feathers, 1 bundle of human hair, 1 mug, 1 leather pouch, 1 piece of buckskin, 1 gourd container, 60 feathers, 1 bone awl, 1 stone implement, 1 ceramic bowl, 1 wooden pillow, 1 throwing stick and 3 ceramic vessels.

At an unknown date, human remains representing a minimum of one individual were removed from an unknown site, in either Kane or San Juan County, UT. These remains are also part of the previously mentioned Lang-Lyman Collection, acquired and accessioned by the Museum of Peoples and Cultures through museum transfers in 1966 (Catalog No. 1966.63.1.1). No known individual was identified. The four associated funerary objects are one basket, one feather and yucca blanket, one lot of seed corn and one feather blanket.

Documentation surrounding the Lang-Lyman expedition indicates that all the burials were found within various dry cave locations. This is consistent with the deposition of other known prehistoric Puebloan burials. In addition, the typology of the objects found with the human remains supports the determination that these burials are affiliated with the prehistoric Anasazi culture.

At an unknown date, human remains representing a minimum of three individuals were removed from an unknown location in Iceberg Canyon near Lake Powell, San Juan County, UT, by private individuals. No further geographical information is known. In 1971, the human remains were donated to the Museum of Peoples and Cultures and were accessioned (Catalog No. 1971.11.5.0). No known individuals were identified. The one associated funerary objects is one lot of clothing fragments.

A twisted fragment of animal hide present on one of the sets of the human remains may represent the remains of a Basketmaker-style rabbitskin robe. Based on the presence of the clothing fragments, it is reasonably determined that the burials date to either the late Basketmaker or early Pueblo era of the Anasazi culture. Based on the period to which the burials date and the general location in which they were found, museum officials have determined that the burials are prehistoric Anasazi and affiliated with modern Puebloan cultures.

In 1971, human remains representing a minimum of one individual were removed from 42Sa2110, Nancy Patterson Village, in Montezuma Canyon, San Juan County, UT, by Nancy Patterson. The human remains were donated to the Museum of Peoples and Cultures later that same year and accessioned (Catalog No. 1971.46.3–13). No known individual was identified. No associated funerary objects are present.

In 1980, human remains representing a minimum of two individuals were removed from 42Sa2110, Nancy Patterson Village, in Montezuma Canyon, San Juan County, UT. The human remains were donated to the Museum of Peoples and Cultures later that same year and accessioned (Catalog Nos. 1980.9.16.0 and 1980.9.17.0). No known individuals were identified. No associated funerary objects are present.

The Nancy Patterson Village (42Sa2110) was principally excavated as a Brigham Young University field school from 1983–1986. The collections from this period are not held at the museum. Prior to that time, smaller collections were gathered from the surface of the site during various field trips, which were led by Brigham Young University Department of Anthropology faculty. Based on the presence of Anasazi-type ceramics and architecture at the site, these burials have been determined to be prehistoric Anasazi and affiliated with modern Puebloan cultures.

At an unknown date, human remains representing a minimum of one individual were removed from an unknown location within Montezuma Canyon, San Juan County, UT. In 1972, the human remains were donated to the Museum of Peoples and Cultures by a private individual and accessioned (Catalog Nos. 1972.51.0.0–1972.51.0.9). No further information regarding the collection is known. No known individual was identified. No associated funerary objects are present.

The human remains appear to date to approximately the Basketmaker/Pueblo period. Based on the time period to which this burial dates and the general location of the site, museum officials have determined that this burial is prehistoric Anasazi and affiliated with modern Puebloan cultures.

In 1974, human remains representing a minimum of one individual were removed from 42Sa3786, White Mesa, San Juan County, UT. This site was surveyed by Brigham Young University as part of a transmission line project contracted by Utah Power and Light. In 1976, the collection from that project was donated to the Museum of Peoples and Cultures and accessioned (Catalog Nos. 1976.52.45.1–16). No known individual was identified. No associated funerary objects are present.

In 1984, Dr. Dale Berge published a report on the collection from White Mesa entitled "Archaeological Investigations of the Pinto-Abajo Transmission Line, San Juan County, Utah." Based on the presence of Anasazi-type ceramics and architecture at the site, the individual has been determined to be prehistoric Anasazi and affiliated with modern Puebloan cultures.

At an unknown date, human remains representing a minimum of one individual were removed from an unknown site. In 1981, the Museum of Peoples and Cultures received and accessioned the human remains from a private individual (Catalog No. 1981.5.1.1). Museum records indicate that this individual received the human remains from a third source, who reportedly acquired the remains from a dry cave in San Juan County, west of Blanding, UT. No further provenience information is known. No known individual was identified. No associated funerary objects are present.

Museum records indicate that the original collector reported the skull to be prehistoric Anasazi/Basketmaker. Based on the provenience and appearance of the human remains, and without the presence of contradictory information, museum personnel have reasonably concluded that this individual is most likely prehistoric Anasazi, and therefore affiliated with modern Puebloan cultures.

In 1983, human remains representing a minimum of two individuals were removed from 42Ka2574, Hog Creek, on the north edge of Hog Creek Canyon, Kane County, UT, by Brigham Young University's Office of Public Archaeology, as part of a construction mitigation project for the relocation of US Highway 89. In 1984, the collection was donated to the Museum of Peoples and Cultures. No known individuals were identified. The six associated funerary objects are one bone pendant, one mano fragment, three stone beads and one lot of numerous bead fragments.

The site was later reported in a 1987 publication: "Archaeological Excavation at Hog Creek Canyon Dune Site 42Ka2574, Hog Creek Canyon, Kane County Utah." Based on a radiocarbon sample taken from the matrix of the burials, the Hog Creek site was determined to be prehistoric Basketmaker/Anasazi and affiliated with modern Puebloan cultures.

Between 1969 and 1973, human remains representing a minimum of one individual were removed from 42Sa971, Monument Village, at the convergence of Montezuma Canyon and Monument Canyon, San Juan County, UT, by a Brigham Young University field school. In 1988, the human remains were donated and accessioned (Catalog No. 1988.164.168.0). No known individual was identified. No associated funerary objects are present.

The collection was reported in two Brigham Young University publications. The first report, "A Preliminary Study of an Anasazi Settlement (42Sa971) Prior to AD 900 in Montezuma Canyon, San Juan County, Southeastern Utah" was written by Gregory Patterson. The second report, "A Preliminary Classification of Anasazi Ceramics from Montezuma Canyon, San Juan County, Southeastern Utah" was written by Dr. Donald Forsyth. Based on the presence of Anasazi-type ceramics and architecture at the site, the human remains were determined to be prehistoric Anasazi and affiliated with modern Puebloan cultures.

Archeological data, artifact typology and cultural components at each of the above-mentioned sites supports the determination that the human remains are Ancestral Puebloan. The Ancestral Puebloans are a prehistoric culture, and are reasonably determined to be linked to modern Puebloan cultures through geography, culture history, oral history and anthropological information. The folklore of modern pueblos places them in the Ancestral Puebloan area since prehistoric times. In addition, anthropological studies have demonstrated a continuity of culture between the modern pueblos and the Ancestral Puebloans.

Officials of the Museum of Peoples and Cultures have determined that, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of 36 individuals of Native American Ancestry. Officials of the Museum of Peoples and Cultures also have determined that, pursuant to 25 U.S.C. 3001(3)(A), the 138 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Museum of Peoples and Cultures have determined that there is a relationship of shared group identity which can reasonably be traced between the human remains and associated funerary objects and the Hopi Tribe of Arizona; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Pueblo of Acoma, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santa

Domingo, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Paul Stavast, Museum of Peoples and Cultures, Brigham Young University, 105 Allen Hall, Provo, UT 84602–3600, telephone (801) 422–0018, before October 25, 2010. Repatriation of the human remains and associated funerary objects to the Hopi Tribe of Arizona; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Pueblo of Acoma, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santa Domingo, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico, may proceed after that date if no additional claimants come forward.

The Museum of Peoples and Cultures are responsible for notifying the Hopi Tribe of Arizona; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Ohkay Owingehm New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico, that this notice has been published.

Dated: September 10, 2010

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–23901 Filed 9–23–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF JUSTICE

Membership of the Senior Executive Service Standing Performance Review Boards

AGENCY: Department of Justice.

ACTION: Notice of Department of Justice's standing members of the Senior Executive Service Performance Review Boards.

SUMMARY: Pursuant to the requirements of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its 2010 Senior Executive Service (SES) Standing Performance Review Boards (PRBs). The purpose of a PRB is to provide fair and impartial review of SES performance appraisals, bonus recommendations and pay adjustments. The PRBs will make recommendations regarding the final performance ratings to be assigned, SES bonuses and/or pay adjustments to be awarded.

FOR FURTHER INFORMATION CONTACT: Rod Markham, Director, Human Resources, Justice Management Division, Department of Justice, Washington, DC 20530; (202) 514–4350.

Lee J. Lofthus,

Assistant Attorney General for Administration.

FEDERAL REGISTER 2010

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KOHN, J. CHRISTOPHER	DIRECTOR, COMMERCIAL LITIGATION BRANCH
KIRSCHMAN JR., ROBERT E.	DEPUTY DIRECTOR, COMMERCIAL LITIGATION BRANCH
STEMPLEWICZ, JOHN	SENIOR TRIAL ATTORNEY
HOLLIS, ROBERT MARK	DIRECTOR, COMMERCIAL LITIGATION BRANCH
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HAUSKEN, GARY L.	SENIOR PATENT ATTORNEY
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CARWILE, P. KEVIN	CHIEF, CAPITAL CASE UNIT
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DUBOSE, MICHAEL M.	CHIEF, COMPUTER CRIME AND INTELLECTUAL PROPERTY SECTION
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MCHENRY, TERESA L.	CHIEF, HUMAN RIGHTS AND SPECIAL PROSECUTION SECTION
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DREHER, ROBERT E.	PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL
KILBOURNE, JAMES C.	CHIEF, APPELLATE SECTION
ALEXANDER, S. CRAIG	CHIEF, INDIAN RESOURCES SECTION
CRUDEN, JOHN C.	DEPUTY ASSISTANT ATTORNEY GENERAL
GELBER, BRUCE S.	CHIEF, ENVIRONMENTAL ENFORCEMENT SECTION
FISHEROW, W. BENJAMIN	DEPUTY CHIEF, ENVIRONMENTAL ENFORCEMENT SECTION
MAHAN, ELLEN M.	DEPUTY CHIEF, ENVIRONMENTAL ENFORCEMENT SECTION
GRISHAW, LETITIA J.	CHIEF, ENVIRONMENTAL DEFENSE SECTION
VADEN, CHRISTOPHER S.	DEPUTY CHIEF, ENVIRONMENTAL DEFENSE SECTION
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RT, HOWARD P.	SENIOR LITIGATION COUNSEL
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HAUGRUD, K. JACK	CHIEF, NATURAL RESOURCES SECTION
CLARK II, TOM C.	DEPUTY CHIEF, NATURAL RESOURCES SECTION
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Executive Office for Immigration Review—EOIR	
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OSUNA, JUAN P.	CHAIRMAN, BOARD OF IMMIGRATION APPEALS
NEAL, DAVID	VICE CHAIRMAN, BOARD OF IMMIGRATION APPEALS
ADKINS-BLANCH, CHARLES K.	ATTORNEY EXAMINER
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FILPPU, LAURI S.	ATTORNEY EXAMINER
GRANT, EDWARD R.	ATTORNEY EXAMINER
GREER, ANNE J.	ATTORNEY EXAMINER
GUENDELSBERGER, JOHN W.	ATTORNEY EXAMINER
HESS, FREDERICK	ATTORNEY EXAMINER
HOLMES, DAVID B.	ATTORNEY EXAMINER
MALPHRUS, GARRY D.	ATTORNEY EXAMINER
MILLER, NEIL P.	ATTORNEY EXAMINER
MULLANE, HUGH G.	ATTORNEY EXAMINER
PAULEY, ROGER ANDREW	ATTORNEY EXAMINER

FEDERAL REGISTER 2010—Continued

Name	Position Title
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O'LEARY, BRIAN M.	CHIEF IMMIGRATION JUDGE
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Executive Office for U.S. Attorneys—EOUSA	
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BELL, SUZANNE L.	DEPUTY DIRECTOR
GUGULIS, KATHERINE C.	DEPUTY DIRECTOR ADMINISTRATION
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VILLEGAS, DANIEL A.	COUNSEL, LEGAL PROGAMS AND POLICY
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SMITH, DAVID L.	COUNSEL FOR LEGAL INITIATIVES
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WHITE III, CLIFFORD J.	DIRECTOR
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HAMILTON, EDWARD A.	DIRECTOR, FACILITIES AND ADMINISTRATIVE SERVICES STAFF
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OLSON, ERIC R.	DEPUTY, CHIEF INFORMATION OFFICER FOR E-GOVERNMENT SERVICES STAFF
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FEDERAL REGISTER 2010—Continued

Name	Position Title
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PELAK, STEVEN W.	DEPUTY CHIEF, COUNTERESPIONAGE SECTION
GAUHAR, TASHINA	DEPUTY ASSISTANT ATTORNEY GENERAL
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PUSTAY, MELANIE ANN	DIRECTOR
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BENDA, BONNIE LEIGH	DEPUTY, CHIEF FINANCIAL OFFICER
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ZUBRENSKY, MICHAEL	DEPUTY ASSISTANT ATTORNEY GENERAL

FEDERAL REGISTER 2010—Continued

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Office of Public Affairs—PAO	
MILLER, MATTHEW A.	DIRECTOR
Office of the Federal Detention Trustee—OFDT	
PEARSON, MICHAEL A.	FEDERAL DETENTION TRUSTEE
MUSEL, DAVID F.	DIRECTOR, JPATS
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THIEMANN, ROBYN L.	DEPUTY ASSISTANT ATTORNEY GENERAL
MORAN, MOLLY J.	DEPUTY ASSISTANT ATTORNEY GENERAL
ZUBRENSKY, MICHAEL	DEPUTY ASSISTANT ATTORNEY GENERAL
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STEHLIK, NOREENE C.	SENIOR TRIAL ATTORNEY
LINDQUIST III, JOHN A.	SENIOR TRIAL ATTORNEY
SAWYER, THOMAS	SENIOR TRIAL ATTORNEY
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HEALD, SETH G.	CHIEF, CIVIL TRIAL SECTION, CENTRAL REGION
KEARNS, MICHAEL J.	CHIEF, CIVIL TRIAL SECTION, SOUTHERN REGION
HYTKEN, LOUISE P.	CHIEF, CIVIL TRIAL SECTION, SOUTHWESTERN REGION
HUBBERT, DAVID A.	CHIEF, CIVIL TRIAL SECTION, EASTERN REGION
WARD, RICHARD	CHIEF, CIVIL TRIAL SECTION, WESTERN REGION
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SMITH, COREY J.	SENIOR TRIAL ATTORNEY
U.S. Marshals Service—USMS	
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FINAN, ROBERT J., II	ASSOCIATE DIRECTOR, OPERATIONS
AUERBACH, GERALD	GENERAL COUNSEL
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DAVIS, LISA M.	ASSISTANT DIRECTOR, INFORMATION TECHNOLOGY
JONES, SYLVESTER E.	ASSISTANT DIRECTOR, WITNESS SECURITY
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ROLSTAD, SCOTT C.	ASSISTANT DIRECTOR FOR JUSTICE PRISONER AND ALIEN TRANSPORTATION SYSTEMS (JPATS)

FEDERAL REGISTER 2010—Continued

Name	Position Title
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MORALES, EBEN	ASSISTANT DIRECTOR, ASSET FORFEITURE
SYMONDS, CANDRA S.	ASSISTANT DIRECTOR, PRISONER OPERATIONS
DOLAN, EDWARD	SPECIAL ASSISTANT FOR FINANCIAL SYSTEMS

[FR Doc. 2010–24027 Filed 9–23–10; 8:45 am]
BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

The Department of Labor (DOL) hereby announces the submission of the information collection request (ICR) titled, Resource Justification Model, to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain* or by contacting Michel Smyth at 202–693–4129 (this is not a toll-free number)/e-mail: *smyth.michel@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6974 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference OMB Control Number 1205–0430. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension without change of currently approved collection.

Title of Collection: Resource Justification Model.

OMB Control Number: 1205–0430.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 212.

Total Estimated Annual Burden Hours: 6519.

Total Estimated Annual Costs Burden: $0.

Description: The collection of actual Unemployment Insurance (UI) administrative cost data from states' accounting records and projected expenditures for upcoming years is accomplished through the Resource Justification Model data collection instrument. The data collected consists of the actual, most recently completed fiscal year's program expenditures and hours broken out by functional activity and two years of projected expenditures. The actual cost data informs Employment and Training Administration's administrative funding allocation model so that state UI program administration funds are allocated as equitably as possible among states. For additional information, see related notice published at 75 FR 34767 on June 18, 2010.

Dated: September 17, 2010.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2010–23891 Filed 9–23–10; 8:45 am]
BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Form 5500, Annual Return/Report of Employee Benefit Plan

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) hereby announces the submission of the information collection request (ICR) sponsored by the Employee Benefits Security Administration (EBSA) titled, "Annual Information Return/Report of Employee Benefit Plan," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before October 25, 2010.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain* or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employee Benefits Security Administration, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6974 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The "Annual Return/Report of Employee Benefit Plan," Form 5500, is the primary source of information concerning the operation, funding, assets and investments of pension and other employee benefit plans. In addition to being an important disclosure document for plan participants and beneficiaries, Form 5500 is a compliance and research tool for the EBSA, Pension Benefit Guaranty Corporation, and Internal Revenue Service. It is also a source of information for use by other Federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies.

Form 5500 constitutes an information collection within the meaning of the PRA. Generally, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The DOL obtains OMB approval for this information collection under OMB Control Number 1210–0110. The current OMB approval is scheduled to expire on September 30, 2010, and the DOL is seeking OMB approval to continue this information collection. For additional information, see the related notice published in the **Federal Register** on June 23, 2010 (75 FR 35843).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference OMB Control Number 1210–0110. The OMB is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employee Benefits Security Administration.

Type of Review: Extension without change of currently approved collection.

Title of Collection: Annual Return/Report of Employee Benefit Plan.

Form Numbers: Form 5500 and 5500–SF.

OMB Control Number: 1210–0110.

Affected Public: Business or other for-profit; not-for-profit institutions.

Total Estimated Number of Respondents: 780,000.

Total Estimated Number of Responses: 780,000.

Total Estimated Annual Burden Hours: 530,000.

Total Estimated Annual Costs Burden: $178,000,000.

Dated: September 20, 2010.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2010–23973 Filed 9–23–10; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Technical Correction of the Caption for Prohibited Transaction Exemption (PTE) 2010–27, Involving the Finishing Trades Institute of the Mid-Atlantic Region (the Plan)

AGENCY: Employee Benefits Security Administration, Department of Labor (the Department).

ACTION: Notice of technical correction.

In the September 16, 2010 issue of the **Federal Register**, the Department published PTE 2010–27 (at 75 FR 56568). PTE 2010–27 is an administrative exemption for the Plan from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974, as amended.

The operative language of PTE 2010–27, which begins at the top of the first column of page 56568 of the September 16, 2010 issue of the **Federal Register** after the boldface heading "Exemption," was not preceded by a caption that indicated the prohibited transaction exemption number. To correct the publication error for PTE 2010–27, the present caption before the boldface heading "Exemption" at the top of the column on page 56568 should be replaced with a new caption to read as follows:

The Finishing Trades Institute of the Mid-Atlantic Region (the Plan), Located in Philadelphia, Pennsylvania [Prohibited Transaction Exemption 2010–27; Exemption Application No. L–11609]

FOR FURTHER INFORMATION CONTACT: Mr. Brian Shiker of the Department at (202) 693–8552. (This is not a toll-free number.)

Signed at Washington, DC, this 21st day of September, 2010.

Ivan L. Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2010–23931 Filed 9–23–10; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0305]

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide, DG–1244, "Availability of Electric Power Sources."

FOR FURTHER INFORMATION CONTACT: Satish Aggarwal, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 251–7627 or e-mail *Satish.Aggarwal@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), entitled, "Availability of Electric Power Sources" temporarily identified by its task number, DG–1244, which should be mentioned in all related correspondence. DG–1244 is proposed Revision 1 of Regulatory Guide 1.93, dated May 1974. This regulatory guide describes guidelines that the staff of the U.S. Nuclear Regulatory Commission (NRC) considers acceptable when the available electric power sources are less than the number of sources required by the limiting conditions for operation (LCOs) for a facility. This regulatory guide is applicable to single- and multiple-unit plants and is consistent with the improved Standard Technical Specifications (iSTS). The LCO-required actions and specified completion times referred to in this regulatory guide are based on the completion times presented in Regulatory Guide 1.93, "Availability of Electric Power Sources," Revision 0, issued December 1974, which have been incorporated into the required actions in the iSTS.

II. Further Information

The NRC staff is soliciting comments on DG–1244. Comments may be accompanied by relevant information or supporting data and should mention DG–1244 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed. You may submit comments by any of the following methods:

1. *Mail comments to:* Rules, Announcements, and Directives Branch, Mail Stop: TWB–05–B01M, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

2. *Federal e-Rulemaking Portal:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2010–0305]. Address questions about NRC dockets to Carol Gallagher, 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

3. *Fax comments to:* Rules, Announcements, and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 492–3446.

Comments would be most helpful if received by November 26, 2010. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Requests for technical information about DG–1244 may be directed to the NRC contact, Satish Aggarwal at (301) 251–7627 or e-mail *Satish.Aggarwal@nrc.gov.*

Electronic copies of DG–1244 are available through the NRC's public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/.* Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML100840581.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov.*

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 17th day of September, 2010.

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2010–23950 Filed 9–23–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 AND 50–278; NRC–2010–0303]

Exelon Generation Company, LLC; Peach Bottom Atomic Power Station Unit Nos. 2 and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Appendix R, Section III.G, "Fire Protection of Safe Shutdown Capability," for the use of operator manual actions (OMAs) in lieu of the requirements specified in Appendix R, Section III.G.2, for Renewed Facility Operating License Nos. DPR–44 and DPR–56, issued to Exelon Generation Company, LLC (the licensee), for operation of Peach Bottom Atomic Power Station (PBAPS), Unit Nos. 2 and 3, located in York and Lancaster Counties, Pennsylvania. Therefore, as required by 10 CFR 51.21, the NRC performed an environmental assessment. Based on the results of the environmental assessment, the NRC is issuing a finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant an exemption to 10 CFR Part 50, Appendix R, Section III.G.2 (III.G.2) for the use of OMAs contained in the licensee's Fire Protection Program (FPP) in lieu of certain technical requirements contained in III.G.2. The licensee's FPP requires that the identified operator manual actions be performed outside of the control room to achieve shutdown of the reactor following fires in certain fire areas in the plant. The licensee states that the documentation provided in the submitted exemption request for PBAPS, Unit Nos. 2 and 3, demonstrates the feasibility and reliability of the identified OMAs.

The proposed action is in accordance with the licensee's application dated March 6, 2009, as supplemented by letter dated February 12, 2010 (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML090680141 and ML100470774, respectively).

The Need for the Proposed Action

The proposed exemption requests the use of OMAs in lieu of meeting the circuit separation and protection requirements contained in III.G.2 for 11 fire areas described in the PBAPS FPP. The OMAs consist of a sequence of tasks that are initiated upon confirmation of a fire in the associated fire area. The proposed exemption is necessary because the crediting of OMAs to achieve and maintain hot shutdown of the reactor is not addressed in 10 CFR Part 50, Appendix R, Section III.G.2, and an exemption is therefore required in accordance with 10 CFR 50.12.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation for the proposed action and concludes that the OMAs addressed in the application are feasible and can be reliably performed. Further, the NRC concludes that the licensee has demonstrated sufficient defense-in-depth such that identified preventative and protective measures in addition to the specified OMAs demonstrate the licensee's ability to preserve or maintain safe shutdown capability in the event of a fire in the analyzed fire areas.

The details of the NRC staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to 10 CFR Part 50, Appendix R, Section III.G.2.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released offsite. There is no significant increase in the amount of any effluent released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

Based on the nature of the exemption, the proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity or the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Stevens Act are expected. There are no impacts to the air or ambient air quality. There are no impacts to historic and cultural resources. There would be no noticeable effect on socioeconomic conditions in the region. Therefore, no changes or different types of non-radiological environmental impacts are expected as a result of the proposed action. Accordingly, the NRC staff concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would not result in a decrease in current environmental impacts. If the proposed action was denied, the licensee would have to perform plant modifications to achieve compliance. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for PBAPS Unit Nos. 1, 2, and 3, dated April 1973, and for PBAPS Unit Nos. 2 and 3, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants," (NUREG–1437, Supplement 10), dated January 2003.

Agencies and Persons Consulted

In accordance with its stated policy, on September xx, 2010, the NRC staff consulted with the Pennsylvania State official, Bradley Fuller, of the Pennsylvania State Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 6, 2009, as supplemented on February 12, 2010 (ADAMS Accession Nos. ML090680141 and ML100470774, respectively). Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland, this 17th day of September 2010.

For the Nuclear Regulatory Commission.

John D. Hughey,

Project Manager, Plant Licensing Branch I–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–23958 Filed 9–23–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–1257; NRC–2009–0028]

Notice of Issuance of Amendment No. 1 for Special Nuclear Material License No. SNM–1227 [AREVA NP, Inc., Richland, WA]

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance of license amendment.

FOR FURTHER INFORMATION CONTACT: Rafael L. Rodriguez, Project Manager, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Telephone: (301) 492–3111; Fax Number: (301) 492–3363; E-mail: *Rafael.Rodriguez@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated June 12, 2008, to the U.S. Nuclear Regulatory Commission (NRC), AREVA NP, Inc. (AREVA) requested approval of an amendment to its Special Nuclear Material License No. SNM–1227 which would authorize AREVA to install and operate a new process at its fuel fabrication facility in Richland, Washington, that will use supercritical carbon dioxide to extract uranium from waste material that contains a relatively low percentage of uranium. This submittal was revised and resubmitted by AREVA on August 22, 2008, to reflect the required portion marking set forth in Title 10 of the Code of Federal Regulations (10 CFR) 2.390(b). Pursuant to the requirements in 10 CFR 2.106, the NRC is providing notice that Amendment No. 1 for Special Nuclear Material License No. SNM–1227 has been issued. AREVA's request for the proposed amendment was previously noticed, and an opportunity to request a hearing was provided in the **Federal Register** on January 16, 2009 (74 FR 3110–3114). The NRC staff evaluated AREVA's license amendment request and concluded that it meets the regulatory criteria for a categorical exclusion, as described in 10 CFR 51.22(c)(11). This conclusion is documented in the NRC staff's Safety Evaluation Report (SER).

This license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and NRC's rules and regulations as set forth in 10 CFR Chapter 1. Accordingly, this license was amended on July 28, 2010, and is effective immediately.

II. Further Information

The NRC has prepared an SER that documents the information that was reviewed and the NRC's conclusion. In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," details with respect to this action, including the SER and accompanying documentation included in the license package, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.*

From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the public version of the documents related to this notice are:

(a) June 12, 2008, Original License Amendment Application: ML081700146;

(b) August 22, 2008, Revised License Amendment Application: ML082420070 and ML082420071;

(c) SER in Support of License Amendment Application: ML101550158; and

(d) Amended Special Nuclear Material License No. SNM–1227: ML101550153.

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *PDR.Resource@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, MD this 16th day of September 2010.

For the Nuclear Regulatory Commission.

Peter J. Habighorst,

Chief, Fuel Manufacturing Branch, Fuel Facility Licensing Directorate, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2010–23953 Filed 9–23–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Radiation Protection and Nuclear Materials

The ACRS Subcommittee on Radiation Protection and Nuclear Materials will hold a meeting on October 22, 2010, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, October 22, 2010—1 p.m. until 5 p.m.

The Subcommittee will review the Standard Review Plan for Renewal of Independent Spent Fuel Storage Installation Licenses and Dry Cask Storage System Certificates of Compliance. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee. Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christopher Brown (Telephone 301–415–7111 or E-mail *Christopher.Brown@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: September 20, 2010.

Christopher Brown,

Acting Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–23943 Filed 9–23–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Plant License Renewal

The ACRS Subcommittee on Plant License Renewal will hold a meeting on October 22, 2010, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, October 22, 2010—8:30 a.m. until 12 p.m.

The Subcommittee will review the proposed Revision 2 to NUREG–1801, "Generic Aging Lessons Learned (GALL) Report." The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Peter Wen (Telephone 301–415–2832 or E-mail *Peter.Wen@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: September 16, 2010.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–23941 Filed 9–23–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Reliability and PRA

The ACRS Subcommittee on Reliability and PRA will hold a meeting on October 18, 2010, at 11545 Rockville Pike, Room T–2B1, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, October 18, 2010, 1 p.m. Until 5 p.m.

The purpose of this meeting is to discuss various human reliability analysis methods. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Girija Shukla (Telephone 301–415–6855 or E-mail: *Girija.Shukla@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009 (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: September 16, 2010.

Antonio F Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–23939 Filed 9–23–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee On Future Plant Designs

The ACRS Subcommittee on Future Plant Designs will hold a meeting on October 21, 2010, at 11545 Rockville Pike, Room T–2B1, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, October 21, 2010, 1 p.m. Until 5 p.m.

The Subcommittee will review current Design Acceptance Criteria associated with Digital Instrumentation and Control (I&C). The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, the Nuclear Energy Institute (NEI), and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christina Antonescu (Telephone 301–415–6792 or E-mail *Christina.Antonescu@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: September 17, 2010.

Antonio Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–23937 Filed 9–23–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the ACRS Joint Subcommittee; Revision to October 4, 2010, ACRS Meeting Federal Register Notice

The **Federal Register** Notice for the ACRS Joint Subcommittee Meeting scheduled to be held on October 4, 2010, is being revised to notify the following:

The meeting will be held on Tuesday, October 19, 2010, from 8:30 a.m. until 5 p.m.

The notice of this meeting was previously published in the **Federal Register** on Friday, September 10, 2010 [75 FR 55365]. All other items remain the same as previously published.

Further information regarding this meeting can be obtained by contacting Maitri Banerjee, Designated Federal Official (Telephone: 301–415–6973, E-mail: *Maitri.Banerjee@nrc.gov* between 7:30 a.m. and 5:15 p.m. (ET)).

Dated: September 17, 2010.

Antonio Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–23935 Filed 9–23–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Materials, Metallurgy & Reactor Fuels

The ACRS Subcommittee on Materials, Metallurgy & Reactor Fuels will hold a meeting on October 21, 2010, at 11545 Rockville Pike, Room T–2B1, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, October 21, 2010, 8:30 a.m. until 12 p.m.

The Subcommittee will review the proposed Revision 1 to (1) Regulatory Guide 1.34 which was issued as DG–1223, (2) Regulatory Guide 1.43 which was issued as DG–1221, (3) Regulatory Guide 1.44 which was issued as DG–1224, and (4) Regulatory Guide 1.50 which was issued as DG–1222. All four draft guidances (DGs) were issued for public comment on July 6, 2009. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Michael Benson (Telephone 301–415–6396 or E-mail *Michael.Benson@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: September 17, 2010.

Antonio Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–23945 Filed 9–23–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0002]

Sunshine Act; Notice of Meeting

DATE: Week of September 27, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Week of September 27, 2010

Wednesday, September 29, 2010

12:55 p.m.—Affirmation Session (Public Meeting) (Tentative)

a. *South Texas Project Nuclear Operating Co.* (South Texas Project Units 3 and 4), NRC Staff Notice of Appeal, Brief on Appeal, and Request for Stay of LBP–10–02, Order (Rulings on the Admissibility of New Contentions and on Intervenors' Challenge to Staff Denial of Documentary Access) (Feb. 9, 2010) (Tentative)

b. *Luminant Generation Company LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), NRC Staff Notice of Appeal, Brief on Appeal, and Request for Stay of Sections IV and V.B of LBP–10–5, Order (Ruling on Intervenors' Access to ISG–016) (Mar. 22, 2010) (Tentative)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.*, braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov. mailto:dlc@nrc.gov.mailto:aks@nrc.gov* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: September 21, 2010.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2010–24129 Filed 9–22–10; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. RM2010–13; Order No. 537]

Postal Rates

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice establishes a docket to solicit comments on the analyses, arguments, and proposals concerning technical issues related to workshare discount design. The proceeding will allow certain issues raised in an earlier proceeding to be fully addressed.

DATES: Comments are due: November 15, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, *stephen.sharfman@prc.gov* or 202–789–6820.

SUPPLEMENTARY INFORMATION: Order No. 536 resolves several important threshold legal and policy issues underlying the design of workshare discounts. The Commission concluded that the pricing constraint on workshare discounts established in 39 U.S.C. 3622(e) may apply within or across products, as that term is defined and employed in the Postal Accountability and Enhancement Act.[1] It concludes that subsection 3622(e) implements a substantial portion of the policies that underlay the Efficient Component Pricing rule as that principle has been articulated in prior regulatory practice. It also concludes that identifying the groups of mail between which worksharing relationships should be recognized for purposes of subsection 3622(e) requires identification of mail that serves the same market and is distinguished from other mail serving that market predominantly by the costs that worksharing activity avoids. The selection of an appropriate base or reference group from which the costs avoided by worksharing are to be calculated depends on what components of the base group are likely to shift to the workshared group in response to changes in their relative prices.

Applying these principles to mail classes, Order No. 536 concludes that there is a worksharing relationship between presort First-Class Mail and single-piece First-Class Mail that is metered or bears Information Based Indicia (IBI). In this docket, the Commission solicits comments on the appropriate base group for measuring First-Class Mail workshare discounts. Commenters should feel free to discuss the merits of the current Bulk Metered Mail (BMM) base category as well as a number of already suggested alternatives, including IBI mail, a weighted average of BMM and IBI mail, "Qualified PC Postage" mail, or some other group of single-piece First-Class Mail. It also solicits comments on the specific cost characteristics that the base category selected should have.

Order No. 536 also concludes that Saturation Mail is not in a worksharing relationship with other groups of Standard Mail. Accordingly, there is no need to further examine the issue of identifying an appropriate reference category for pricing Saturation Mail in a follow-on proceeding.

Order No. 536 contemplates that this follow-on proceeding will also consider technical proposals to revise or refine the manner in which avoided costs are modeled. The Postal Service's comments in Docket No. RM2009–3, for example, mention its intention to propose changes to the way some cost pools are classified for purposes of cost avoidance analysis (whether they should be treated as proportional, fixed, or non-worksharing related). The comments of the American Postal Workers Union, AFL-CIO in that docket express a more general desire to re-evaluate and modify the current method of classifying avoided cost pools.

In Docket No. RM2009–3, various parties expressed an intent to propose changes to the way delivery and other costs are estimated in calculating the costs avoided by presort First-Class Mail. Comments suggested de-averaging rates for First-Class Mail by indicia, the use of two Cost and Revenue Analysis adjustment factors to develop workshare discounts, and a form of pre-barcoding discount that would recognize the savings generated by single-piece First-Class Mail that is CASS-certified and bears an Intelligent Mail barcode. All of these issues are eligible for consideration in this docket.

It is ordered:

1. The Commission establishes Docket No.RM2010–13 to consider analyses, arguments, and proposals concerning technical issues that relate to the design of workshare discounts, as described in the body of this order.

2. Comments are due on or before November 15, 2010.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Emmett Rand Costich to represent the interests of the general public in this proceeding.

4. The Secretary shall arrange for publication of this notice in the **Federal Register.**

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–23927 Filed 9–23–10; 8:45 am]

BILLING CODE 7710–FW–S

[1] Pub. L. 109–435, 120 Stat. 3198 (2006) (PAEA).

RAILROAD RETIREMENT BOARD

Proposed Data Collection(s) Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collections are necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden for the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. *Title and purpose of information collection:*

Placement Service; OMB 3220–0057:

Section 12(i) of the Railroad Unemployment Insurance Act (RUIA), authorizes the Railroad Retirement Board (RRB) to establish, maintain, and operate free employment offices to provide claimants for unemployment benefits with job placement opportunities. Section 704(d) of the Regional Railroad Reorganization Act of 1973, as amended, and as extended by the consolidated Omnibus Budget Reconciliation Act of 1985, required the RRB to maintain and distribute a list of railroad job vacancies, by class and craft, based on information furnished by rail carriers to the RRB. Although the requirement under the law expired effective August 13, 1987, the RRB has continued to obtain this information in keeping with its employment service responsibilities under Section 12(k) of the RUIA. Application procedures for the job placement program are prescribed in 20 CFR 325. The procedures pertaining to the RRB's obtaining and distributing job vacancy reports furnished by rail carriers are described in 20 CFR 346.1.

The RRB currently utilizes four forms to obtain information needed to carry out its job placement responsibilities. Form ES–2, Supplemental Information for Central Register, is used by the RRB to obtain information needed to update a computerized central register of separated and furloughed railroad employees available for employment in the railroad industry. Form ES–21, Referral to State Employment Service, and ES–21c, Report of State Employment Service Office, are used by the RRB to provide placement assistance for unemployed railroad employees through arrangements with State Employment Service offices. Form UI–35, Field Office Record of Claimant Interview, is used primarily by RRB field office staff to conduct in-person interviews of claimants for unemployment benefits. Completion of these forms is required to obtain or maintain a benefit. In addition, the RRB also collects Railroad Job Vacancies information received voluntarily from railroad employers. No changes are proposed to any of the data collection instruments associated with the information collection.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

The estimated annual respondent burden for this collection is as follows:

Form #(s)	Annual responses	Completion time (min)	Burden (hrs)
ES–2	7,500	0.25	31
ES–21	3,500	0.68	40
ES–21c	1,250	1.50	31
UI–35 (in-person)	9,000	7.00	1,050
UI–35 (by mail)	1,000	10.50	175
Railroad Job Vacancies Report	750	10.00	125
TOTAL	23,000	....	1,452

2. *Title and Purpose of Information Collection:*

Withholding Certificate for Railroad Retirement Monthly Annuity Payments; OMB 3220–0149, Form RRB–W–4P:

The Internal Revenue Code requires all payers of tax liable private pensions to U.S. citizens to: (1) Notify each recipient at least concurrent with initial withholding that the payer is, in fact, withholding benefits for tax liability and that the recipient has the option of electing not to have the payer withhold, or to withhold at a specific rate; (2) withhold benefits for tax purposes (in the absence of the recipient's election not to withhold benefits); and (3) notify all beneficiaries, at least annually, that they have the option of changing their withholding status or elect not to have benefits withheld.

The RRB provides Form RRB–W4P, Withholding Certificate for Railroad Retirement Payments, to its annuitants to exercise their withholding options. Completion of the form is required to obtain or retain a benefit. One response is requested of each respondent. No changes are proposed to Form RRB W–4P.

The RRB estimates that 35,000 annuitants utilize Form RRB W–4P annually. The completion time for Form RRB W–4P varies depending on individual circumstances. The estimated average completion time for Form RRB W–4P is 39 minutes for recordkeeping, 24 minutes for learning about the law or the form, and 59 minutes for preparing the form.

Additional information or comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV*. Comments regarding the information collection should be addressed to Patricia A. Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Patricia.Henaghan@RRB.GOV*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 2010–23823 Filed 9–23–10; 8:45 am]

BILLING CODE 7905–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12279 and #12280]

Iowa Disaster Number IA–00024

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Iowa (FEMA–1930–DR), dated 08/14/2010.

Incident: Severe storms, flooding, and tornadoes.

Incident Period: 06/01/2010 through 08/31/2010.

Effective Date: 09/17/2010.

Physical Loan Application Deadline Date: 10/13/2010.

EIDL Loan Application Deadline Date: 05/16/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Iowa, dated 08/14/2010 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Appanoose, Wapello.

Contiguous Counties: (Economic Injury Loans Only):

Iowa: Davis, Jefferson.

Missouri: Putnam, Schuyler.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–23995 Filed 9–23–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12327 and #12328]

Wisconsin Disaster #WI–00027

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA–1933–DR), dated 09/18/2010.

Incident: Severe storms, tornadoes, and flooding.

Incident Period: 07/20/2010 through 07/24/2010.

Effective Date: 09/18/2010.

Physical Loan Application Deadline Date: 11/17/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 06/20/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/18/2010, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):

Grant, Milwaukee.

Contiguous Counties (Economic Injury Loans Only):

Wisconsin: Crawford, Iowa, Lafayette, Ozaukee, Racine, Richland, Washington, Waukesha.

Iowa: Clayton, Dubuque.

Illinois: Jo Daviess.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.000
Homeowners Without Credit Available Elsewhere	2.500
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12327B and for economic injury is 123280.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–23998 Filed 9–23–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62940; File No. SR–NYSE–2010–66]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add Certain Rules to the List of Exchange Rule Violations and Fines Applicable Thereto

September 20, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 9, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 476A to add certain rules to its List of Exchange Rule Violations and Fines Applicable Thereto ("Minor Rule Violation Plan"). The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Rule 476A to add certain rules to its Minor Rule Violation Plan to reflect approved changes to Exchange rules.[3] Specifically, in connection with the Exchange's process to harmonize certain Exchange rules with rules of the Financial Industry Regulatory Authority, Inc. ("FINRA"), the Exchange has deleted certain Exchange rules and replaced them with new rules that have different rule numbers. The Exchange proposes this rule filing to add the new rule references to the Minor Rule Violation Plan for those rules that have been added as part of the FINRA harmonization process. The Exchange will not delete the old rule references in the Minor Rule Violation Plan so that violations of prior Exchange rules that occurred before the amendments described below took effect still fall under the jurisdiction of the Minor Rule Violation Plan.

In connection with the harmonization process, the Exchange adopted the following new NYSE Rules, which correspond with the same-numbered consolidated FINRA Rules, and which replaced prior Exchange rules:

- Rule 2150 (Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts) replaced old Rules 352(a)–(d);
- Rule 3130 (Annual Certification of Compliance and Supervisory Processes) replaced, in relevant part, old Rules 342.30(d) and (e) and Rule Interpretation 311(b)(5);
- Rule 3310 (Anti-Money Laundering Compliance Program) replaced old Rule 445;
- Rule 4110 (Capital Compliance) replaced, in relevant part, old Rules 312(h) and 313;

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange's corporate affiliate, NYSE Amex LLC ("NYSE Amex"), submitted a companion rule filing proposing corresponding amendments to NYSE Amex Disciplinary Rule 476A. *See* SR–NYSEAmex–2010–94.

• Rule 4521 (Notifications, Questionnaires and Reports) replaced, in relevant part, old Rule 421;

• Rule 4560 (Short-Interest Reporting) replaced old Rules 421(1) and 421.10; and

• Rule 5190 (Notification Requirements for Offering Participants) replaced old Rule 392.[4]

These old Rules, or certain provisions thereof, are subject to the Exchange's Minor Rule Violation Plan under NYSE Rule 476A. At the time the new Rules were adopted to replace the old Exchange Rules, however, they were not added to the Exchange's Minor Rule Violation Plan. The Exchange therefore proposes to update the Exchange's Minor Rule Violation Plan under NYSE Rule 476A by adding the new rule references identified above.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with, and furthers the objectives of, Section 6(b)(5) of the Act,[5] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also furthers the objectives of Section 6(b)(6) of the Act,[6] in that it provides for appropriate discipline for violations of Exchange rules and regulations.

The Exchange believes that the proposed rule change will provide the Exchange with greater regulatory flexibility to enforce the prescriptions of certain rules in a more informal manner while also preserving the Exchange's discretion to seek formal discipline for more serious transgressions as warranted.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(3) thereunder.[8] Because the proposed rule change is concerned solely with the administration of the Exchange, the proposed rule change has become immediately effective upon filing pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(3) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2010–66 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2010–66. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2010–66 and should be submitted on or before October 15, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–23908 Filed 9–23–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62947; File No. SR–NYSEAmex–2010–96]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of a Proposed Rule Change Amending NYSE Amex Equities Rule 104 To Adopt Pricing Obligations for Designated Market Makers

September 20, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 17, 2010, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

[4] *See* Securities Exchange Act Release Nos. 59965 (May 21, 2009), 74 FR 25783 (May 29, 2009) (SR–NYSE–2009–25) (adopting, *inter alia,* NYSE Rules 3130, 4560, 5190); 61158 (December 11, 2009), 74 FR 67942 (December 21, 2009) (SR–NYSE–2009–123) (adopting NYSE Rule 2150); 61273 (December 31, 2009), 75 FR 1091 (January 8, 2010) (SR–NYSE–2009–134) (adopting NYSE Rule 3310); 61557 (February 22, 2010), 75 FR 9472 (March 2, 2010) (SR–NYSE–2010–10) (adopting, *inter alia,* NYSE Rules 4110, 4521). *See also* NYSE and NYSE Amex Information Memoranda 09–24 (June 2, 2009); 10–09 (February 18, 2010); 10–12 (March 11, 2010).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(3).

[9] 17 CFR 200.30–3(a)(12); 200.30–3(a)(44).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rule 104 to adopt pricing obligations for Designated Market Makers ("DMMs"). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Amex Equities Rule 104 to adopt pricing obligations for DMMs. Under the proposal, the Exchange will require DMMs to continuously maintain two-sided bid and offer interest within a Designated Percentage [3] from the National Best Bid and National Best Offer ("NBBO") for each security in which they are registered. These pricing obligations are intended to eliminate trade executions against DMM placeholder quotations traditionally priced far away from the inside market, commonly known as "stub quotes." They are also intended to augment and work in conjunction with Trading Pauses in individual securities due to extraordinary market volatility, which are already in place on a pilot basis for stocks in the S&P 500® Index and the Russell 1000® Index, under Exchange Rule 80C.[4]

Under the proposal, the Exchange will require DMMs to enter and maintain quotes priced no more than the Designated Percentage away from the NBBO. Permissible quotes are determined by the individual character of the security, the time of day in which the quote is entered, and other factors which are summarized below.

For purposes of the proposed rule, Designated Percentage shall mean the Threshold Move as defined under Rule 80C less two (2) percentage points. Because the Threshold Move across all exchanges is currently 10%, a DMM's quote in a security may not be more than 8% away from NBBO. Once a permissible quote is entered, it may rest without adjustment until such time as it is more than the Defined Limit away from the NBBO. For purposes of the proposed rule, the Designated Limit shall mean the Threshold Move as defined under Rule 80C less one-half percentage point (*i.e.* 9.5%). If the DMM's resting interest exceeds the Defined Limit the DMM must enter new interest at a price not more than the Designated Percentage of 8% away from the NBBO (or identify to the Exchange current resting interest that satisfies the DMM's obligation). For times during the trading day when a Trading Pause is not in effect under Rule 80C (*e.g.,* before 9:45 a.m. and after 3:35 p.m.), the Designated Percentage calculation will assume a trigger percentage of 22%. Therefore, a DMM must maintain a quote no further than 20% away from the NBBO and the quote may rest without adjustment until it is more than 21.5% from the NBBO. In the absence of an NBBO, the above calculations will remain the same, but will use the last reported sale from the single plan processor responsible for consolidation of information for the security pursuant to Rule 603 of Regulation NMS.[5]

For securities that are not subject to Trading Pauses, the Designated Percentage will assume a trigger percentage of 32% and apply the same 2% reduction. Thus, DMMs registered in those securities shall be required to maintain quotes no more than 30% away from NBBO. As with securities subject to Trading Pauses, once a permissible quote is entered it may rest without adjustment until such time as it becomes more than the Defined Limit away from the NBBO (31.5%), whereupon the DMM must enter new interest at a price not more than the Designated Percentage of 30% away from the NBBO (or identify to the Exchange current resting interest that satisfies the DMM's obligation). The Exchange proposes that these requirements shall apply to NMS Stocks (as defined in Rule 600 under Regulation NMS) [6] during the trading day.

Nothing in the proposal shall preclude a DMM from quoting at price levels that are closer to the NBBO than the levels required under the proposal.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change also is consistent with the principles of Section 11A(a)(1) [9] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes the proposed rule change meets these requirements in that it promotes transparency and uniformity concerning pricing obligations across markets for certain market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

[3] The term Designated Percentage is defined in proposed Rule 104(a)(1)(B)(iii).

[4] *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–NYSEAmex–2010–46). *See also* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–NYSEAmex–2010–63). *See also* Rule 80C.

[5] 17 CFR 240.603.

[6] 17 CFR 240.600.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78k–1(a)(1).

organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2010–96 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–96. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEAmex–2010–96 and should be submitted on or before October 15, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–23970 Filed 9–23–10; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62948; File No. SR–NYSE–2010–69]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of a Proposed Rule Change Amending Rule 104 To Adopt Pricing Obligations for Designated Market Makers

September 20, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 17, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 104 to adopt pricing obligations for Designated Market Makers ("DMMs"). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 104 to adopt pricing obligations for DMMs. Under the proposal, the Exchange will require DMMs to continuously maintain two-sided bid and offer interest within a Designated Percentage[3] from the National Best Bid and National Best Offer ("NBBO") for each security in which they are registered. These pricing obligations are intended to eliminate trade executions against DMM placeholder quotations traditionally priced far away from the inside market, commonly known as "stub quotes." They are also intended to augment and work in conjunction with Trading Pauses in individual securities due to extraordinary market volatility, which are already in place on a pilot basis for stocks in the S&P 500® Index and the Russell 1000® Index, under Exchange Rule 80C.[4]

Under the proposal, the Exchange will require DMMs to enter and maintain quotes priced no more than the Designated Percentage away from the NBBO. Permissible quotes are determined by the individual character of the security, the time of day in which the quote is entered, and other factors which are summarized below.

For purposes of the proposed rule, Designated Percentage shall mean the Threshold Move as defined under Rule 80C less two (2) percentage points. Because the Threshold Move across all exchanges is currently 10%, a DMM's quote in a security may not be more than 8% away from NBBO. Once a permissible quote is entered, it may rest without adjustment until such time as it is more than the Defined Limit away from the NBBO. For purposes of the proposed rule, the Designated Limit shall mean the Threshold Move as defined under Rule 80C less one-half percentage point (i.e. 9.5%). If the DMM's resting interest exceeds the Defined Limit the DMM must enter new interest at a price not more than the Designated Percentage of 8% away from the NBBO (or identify to the Exchange current resting interest that satisfies the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term Designated Percentage is defined in proposed Rule 104(a)(1)(B)(iii).

[4] *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–NYSE–2010–39). *See also* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–NYSE–2010–49). *See also* Rule 80C.

DMM's obligation). For times during the trading day when a Trading Pause is not in effect under Rule 80C (*e.g.,* before 9:45 a.m. and after 3:35 p.m.), the Designated Percentage calculation will assume a trigger percentage of 22%. Therefore, a DMM must maintain a quote no further than 20% away from the NBBO and the quote may rest without adjustment until it is more than 21.5% from the NBBO. In the absence of an NBBO, the above calculations will remain the same, but will use the last reported sale from the single plan processor responsible for consolidation of information for the security pursuant to Rule 603 of Regulation NMS.[5]

For securities that are not subject to Trading Pauses, the Designated Percentage will assume a trigger percentage of 32% and apply the same 2% reduction. Thus, DMMs registered in those securities shall be required to maintain quotes no more than 30% away from NBBO. As with securities subject to Trading Pauses, once a permissible quote is entered it may rest without adjustment until such time as it becomes more than the Defined Limit away from the NBBO (31.5%), whereupon the DMM must enter new interest at a price not more than the Designated Percentage of 30% away from the NBBO (or identify to the Exchange current resting interest that satisfies the DMM's obligation). The Exchange proposes that these requirements shall apply to NMS stocks (as defined in Rule 600 under Regulation NMS) [6] during the trading day.

Nothing in the proposal shall preclude a DMM from quoting at price levels that are closer to the NBBO than the levels required under the proposal.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change also is consistent with the principles of Section 11A(a)(1) [9] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes the proposed rule change meets these requirements in that it promotes transparency and uniformity concerning pricing obligations across markets for certain market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2010–69 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2010–69. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2010–69 and should be submitted on or before October 15, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–23971 Filed 9–23–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62955; File No. SR–NYSE–2010–67]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC Relating to Execution Algorithm of NYBX Orders

September 20, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2]

[5] 17 CFR 240.603.

[6] 17 CFR 240.600.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78k–1(a)(1).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that, on September 9, 2010, the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 1600 (New York Block Exchange℠) ("NYBX℠" or the "Facility") to provide for simultaneous routing, rather than sequential routing as the Facility currently operates, of appropriate volume from an NYBX order to attempt to execute simultaneously against all available contra side liquidity within the limit price of the order that is revealed on the initial market evaluation, whether that liquidity (1) Is in the NYSE Display Book® ("DBK"), displayed and undisplayed, (2) is in the Facility, (3) consists of top-of-book contra side quotations displayed on other automated trading centers that must be routed to in order to avoid potential trade throughs (in compliance with Regulation NMS) or (4) consists of top-of-book contra side quotations displayed on other automated trading centers where no potential trade through is involved and Regulation NMS does not require routing. There will no longer be an initial routing of the full amount of the order (less any shares routed to other automated trading centers to comply with Regulation NMS) to the DBK in the hope that there will be some additional volume executed (over and above the displayed and undisplayed contra side liquidity in the DBK) against available contra side interest, if any, in the Capital Commitment Schedule ("CCS") of the Designated Market Maker provided for in NYSE Rule 1000(d)(i). The text of the proposed rule change is available at the Exchange's principal office, the Commission's Public Reference Room, and the Exchange's Web site at *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 1600 (New York Block Exchange℠) to provide for simultaneous routing, rather than sequential routing as the facility currently operates, of appropriate volume from an NYBX order to attempt to execute simultaneously against all available contra side liquidity within the limit price of the order that is revealed on the initial market evaluation, whether that liquidity (1) Is in the DBK, displayed and undisplayed, (2) is in the Facility, (3) consists of top-of-book contra side quotations displayed on other automated trading centers that must be routed to in order to avoid potential trade throughs (in compliance with Regulation NMS) or (4) consists of top-of-book contra side quotations displayed on other automated trading centers where no potential trade through is involved and Regulation NMS does not require routing. The following is a description of how the NYBX Facility currently operates, complete with examples, followed by a description of the "Proposed Change in the Process," also with examples.

Current Operation of the Facility

As currently provided in NYSE Rule 1600, an order in the NYBX Facility interacts with contra side liquidity in the DBK and the Facility itself through a series of separate transactions that may involve the order moving sequentially from one price level to another (all within the limit price of the order) and/or back and forth between the Facility and the DBK. In addition, if an NYBX order would execute in the DBK or in the Facility at a price that may potentially trade through a protected quotation of another automated trading center(s), applicable volume from the order will be routed immediately to such automated trading center(s) to assure compliance with Regulation NMS. Further, when contra side liquidity is available in the DBK at prices that are within the limit price of the NYBX order, the full amount of the order (less any shares routed to other automated trading centers to comply with Regulation NMS) is sent to the DBK in the hope that, in addition to execution with the displayed and undisplayed contra side liquidity in the DBK at the particular price, there will be some additional execution with available contra side interest, if any, in the CCS of the Designated Market Maker.

As the execution of the order proceeds, the Facility reevaluates the market at various points to check for updated market data and adjusts the routing of the remaining portion of the order accordingly. Finally, after all available executions in the DBK and the Facility have taken place, including the routing of appropriate volume to other automated trading centers to prevent trade throughs of protected quotations, any remaining portion of the order will be routed away for execution with all remaining available top-of-book contra side quotations within the limit price of the order displayed by other automated trading centers even though not required by Regulation NMS.

The following examples demonstrate how NYBX orders are currently processed prior to implementation of the proposed amendment. In the examples, "MTV" stands for the optional, user-defined Minimum Triggering Volume Quantity of an NYBX order provided for in NYSE Rule 1600.

NYBX Market Evaluation

NYBX (Sell orders):

5000 shares @ 21.00 (MTV = 100)
5000 shares @ 22.00 (MTV = 100)

DBK (Sell orders):

1000 shares @ 21.00 (hidden)
1000 shares @ 22.00
1000 shares @ 23.00

CHX (Sell orders):

1000 shares @ 21.00

BATS (Sell orders):

1000 shares @ 22.00

Scenario A: NYBX Buy order for 5000 shares at 21.00 (MTV = 100 shares)

Results (each number below represents a separate step):

1. 5000 shares routed to DBK at 21.00 and 1000 are executed at 21.00.
2. 4000 shares remain and are sent back to NYBX at 21.00.
3. Verify no market data updates.
4. 4000 shares execute in NYBX at 21.00.

The full amount of the above order is initially routed to DBK due to the possibility of interaction with CCS interest. Note that no orders were routed to other automated trading centers because (i) there were no potential trade throughs that would violate Regulation

NMS and (ii) DBK and NYBX had priority for executions at 21.00 and there were no shares left from the order to execute at that price on CHX.

Scenario B: NYBX Buy order for 6500 shares at 21.00 (MTV = 100 shares)

Results (each number below represents a separate step):

1. 6500 shares routed to DBK at 21.00 and 1000 are executed at 21.00.
2. 5500 shares remain and are sent back to NYBX at 21.00.
3. Verify no market data updates.
4. 5000 shares execute in NYBX at 21.00.
5. Verify no market data updates.
6. 500 shares routed to CHX at 21.00 and all are executed at 21.00.

Again, the full amount of the order is initially routed to DBK and no orders are initially routed to other automated trading centers because there were no potential trade throughs that would violate Regulation NMS. However, shares are routed to CHX at the end of the sequence because all interest at 21.00 in both DBK and NYBX is exhausted and additional shares at that price are available on CHX even though Regulation NMS does not require shares to be routed there.

Scenario C: NYBX Buy order for 13500 shares at 22.00 (MTV = 100 shares)

Results (each number below represents a separate step):

1. 1000 shares routed to CHX at 21.00 (Reg. NMS) and all are executed at 21.00. 12500 shares simultaneously routed to DBK at 21.00 and 1000 are executed at 21.00.
2. 11500 shares remain and are sent back to NYBX at 21.00.
3. Verify no market data updates.
4. 5000 shares execute in NYBX at 21.00.
5. Verify no market data updates.
6. 6500 shares remain and are routed to DBK at 22.00 and 1000 are executed at 22.00.
7. 5500 shares remain and are sent back to NYBX at 22.00.
8. Verify no market data updates.
9. 5000 shares execute in NYBX at 22.00.
10. Verify no market data updates.
11. 500 shares routed to BATS at 22.00 and all are executed at 22.00.

In Scenario C, 1000 shares are initially routed to CHX at 21.00 to eliminate the potential of a trade through of this protected quotation (since the size and price limit of the order mean that contra side liquidity in the DBK and the Facility at 22.00 will be executed against) that is prohibited by Regulation NMS. The full amount of the remaining portion of the order is simultaneously routed to the DBK at 21.00 even though only 1000 shares are available there at that price, because of the potential to interact with CCS interest. Later in the sequence of events, the full amount of the remaining order at that point (6500 shares) is routed to the DBK at 22.00 for the same reason, even though only 1000 shares are available there at that price. At the end of the sequence, the routing of 500 shares to BATS at 22.00 is not for the purpose of compliance with Regulation NMS (since no executions at a higher price will be triggered by the size and price limit of this order), but is made to access additional top-of-book contra side liquidity at another automated market center because no additional liquidity at that price is available in either the DBK or the Facility.

Scenario D: NYBX Buy order for 14500 shares at 23.00 (MTV = 100 shares)

Results (each number below represents a separate step):

1. 1000 shares routed to CHX at 21.00 (Reg. NMS) and all are executed at 21.00. 1000 shares routed to BATS at 22.00 (Reg. NMS) and all are executed at 22.00. 12500 shares simultaneously routed to DBK at 21.00 and 1000 are executed at 21.00.
2. 11500 shares remain and are sent back to NYBX at 21.00.
3. Verify no market data updates.
4. 5000 shares execute in NYBX at 21.00.
5. Verify no market data updates.
6. 6500 shares remain and are routed to DBK at 22.00 and 1000 are executed at 22.00.
7. 5500 shares remain and are sent back to NYBX at 22.00.
8. Verify no market data updates.
9. 5000 shares execute in NYBX at 22.00.
10. Verify no market data updates.
11. 500 shares routed to DBK at 23.00 and all are executed at 23.00.

Scenario D is very similar to Scenario C, except that the increase in order size and the increase in the limit price to 23.00 create a potential trade through at 23.00 in the DBK of the 22.00 protected quotation at BATS. Consequently, in addition to the 1000 shares that are initially routed to CHX at 21.00 to eliminate the potential for a trade through of that protected quotation that is prohibited by Regulation NMS, an additional 1000 shares are initially routed to BATS at 22.00 to eliminate the potential for a trade through of that protected quotation as well. The remaining execution sequence is the same as Scenario C except that the final 500 shares of the order are routed to the DBK and executed at 23.00 because all lower contra side prices in the market have been executed against.

Proposed Change in the Process

In practice, the fact that the NYBX order proceeds through a series of steps that take place sequentially rather than simultaneously results in the disappearance or the adjustment of a substantial portion of the available contra side liquidity that shows up on the initial market evaluation, before the NYBX order is able to execute against that liquidity. Consequently, the purpose of the proposed amendment is to capture a higher percentage of the available contra side liquidity by attempting to execute simultaneously against all such liquidity within the limit price of the order that is revealed on the initial market evaluation, whether that liquidity (1) Is in the DBK (displayed and undisplayed), (2) is in the NYBX or (3) consists of top-of-book contra side quotations displayed on other automated trading centers. The initial portion of the order routed to the DBK will no longer be oversized in the hope of interacting with CCS interest, but will be sized based on the total amount of displayed and undisplayed contra side liquidity in the DBK that is available for execution within the limit price of the order. The same principle (no oversizing) will continue to be applicable to portions of the order that attempt to execute against available contra side interest in the Facility and against such interest that is displayed on other automated trading centers.

As is the case with respect to the current operation of the Facility and in compliance with Regulation NMS, applicable volume will be routed immediately to execute against all protected quotations of other automated trading centers that may potentially be traded through by the NYBX order. However, the routing of applicable volume to other automated trading centers for execution against available contra side top-of-book quotations displayed by such markets where *no* potential trade through is involved will no longer be delayed until the order has executed with all available contra side liquidity in the DBK and the Facility. Instead, such volume will be routed out at the same time that other portions of the order attempt to execute against available contra side liquidity in the Facility or are routed for execution to the DBK or to other automated trading centers in compliance with Regulation NMS.

In a situation in which the size of the NYBX order is less than the total available contra side liquidity that is potentially executable within the limit price in the Facility and the DBK and at the top-of-book at other automated trading centers, the "tie breaker" rules for routing decision purposes will provide that (i) an execution in the DBK will have priority over an execution at the same price in the Facility or on another automated trading center, and (ii) an execution in the Facility will have priority over an execution at the same price on another automated trading center.

The following examples demonstrate how NYBX orders will be processed under the proposed amendment. Assume the same NYBX initial market evaluation as above and the same four scenarios.

Scenario A: NYBX Buy order for 5000 shares at 21.00 (MTV = 100 shares)

Results (each number below represents a separate step):

1. 1000 shares routed to DBK at 21.00 and all are executed at 21.00 4000 shares simultaneously executed in NYBX at 21.00

In Scenario A, no shares are routed to other automated trading centers because (i) there are no potential trade throughs for this price limit and order volume, and (ii) executions at 21.00 in DBK and NYBX at 21.00 have priority over executions at CHX at the same price. Even though the entire 5000 shares could execute within NYBX at 21.00 with no routing necessary, 1000 shares are routed to the DBK to execute against contra side liquidity there at the same price because executions in DBK have priority over executions in NYBX. Unlike the current process, none of the routings to the DBK will be oversized (i.e., the number of shares routed will not exceed the displayed and undisplayed interest in the DBK at a given price). Therefore, only 1000 shares will be initially routed to the DBK instead of the full order size of 5000 shares. Note that everything in Scenario A takes place simultaneously under the proposed amendment, compared to four sequential steps as the Facility currently operates.

Scenario B: NYBX Buy order for 6500 shares at 21.00 (MTV = 100 shares)

Results (each number below represents a separate step):

1. 1000 shares routed to DBK at 21.00 and all are executed at 21.00. 5000 shares simultaneously execute in NYBX at 21.00. 500 shares simultaneously routed to CHX at 21.00 and all are executed at 21.00.

Again, only the amount of the displayed and undisplayed interest in the DBK is routed to the DBK, and no orders are routed to other automated trading centers for Regulation NMS compliance purposes (since there are no potential trade throughs that would violate Regulation NMS). However, shares are routed to CHX because all interest at 21.00 in both DBK and NYBX will be executed against by the order, and additional shares at that price are available on CHX even though Regulation NMS does not require shares to be routed there for execution. Note that everything in Scenario B takes place simultaneously under the proposed amendment, compared to six sequential steps as the Facility currently operates.

Scenario C: NYBX Buy order for 13500 shares at 22.00 (MTV = 100 shares)

Results (each number below represents a separate step):

1. 1000 shares routed to CHX at 21.00 (Reg. NMS) and all are executed at 21.00. 1000 shares simultaneously routed to DBK at 21.00 and all are executed at 21.00. 5000 shares simultaneously execute in NYBX at 21.00. 1000 shares simultaneously routed to DBK at 22.00 and all are executed at 22.00. 5000 shares simultaneously execute in NYBX at 22.00. 500 shares simultaneously routed to BATS at 22.00 and all are executed at 22.00.

In Scenario C, 1000 shares are routed to CHX at 21.00 to eliminate the potential of a trade through at 22.00 of this protected quotation (since the size and price limit of the order mean that contra side liquidity in the DBK and the Facility at 22.00 will be executed against) that is prohibited by Regulation NMS. The simultaneous routing of 500 shares to BATS at 22.00 is not for the purpose of compliance with Regulation NMS (since no executions at a higher price will be triggered by the size and price limit of this order), but is made to access additional top-of-book contra side liquidity at another automated market center because no additional liquidity at that price is available in either the DBK or the Facility. As before, only the amount of the displayed and undisplayed interest in the DBK is routed to the DBK. Note that everything in Scenario C takes place simultaneously under the proposed amendment, compared to eleven sequential steps as the Facility currently operates.

Scenario D: NYBX Buy order for 14500 shares at 23.00 (MTV = 100 shares)

Results (each number below represents a separate step):

1. 1000 shares routed to CHX at 21.00 (Reg. NMS) and all are executed at 21.00. 1000 shares simultaneously routed to BATS at 22.00 (Reg. NMS) and all are executed at 22.00. 1000 shares simultaneously routed to DBK at 21.00 and all are executed at 21.00. 5000 shares simultaneously execute in NYBX at 21.00. 1000 shares simultaneously routed to DBK at 22.00 and all are executed at 22.00. 5000 shares simultaneously execute in NYBX at 22.00. 500 shares simultaneously routed to DBK at 23.00 and all are executed at 23.00.

Scenario D is very similar to Scenario C, except that the increase in order size and the increase in the limit price to 23.00 mean that a full 1000 shares also need to be routed to BATS at 22.00 to eliminate the potential for a trade through in the DBK at 23.00 of that protected quotation in violation of Regulation NMS. Consequently, in addition to the 1000 shares that are initially routed to CHX at 21.00 to eliminate the potential for a trade through of that protected quotation that is prohibited by Regulation NMS, an additional 1000 shares are simultaneously routed to BATS at 22.00 to eliminate the potential for a trade through of that protected quotation as well. Scenario D also differs from Scenario C in that the final routing to DBK is against a portion of the available contra side liquidity there at 23.00, since all lower contra side prices in the market have been executed against. Note that everything in Scenario D takes place simultaneously under the proposed amendment, compared to eleven sequential steps as the Facility currently operates.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [3] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5) [4] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. More specifically, the Exchange believes that the proposed rule change will improve the quality of the market and the outcomes for investors by capturing a higher percentage of the available contra side liquidity through attempting to execute

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

simultaneously against all such liquidity within the limit price of the order that is revealed on the initial market evaluation, thereby increasing the probability that a large order placed in the Facility will achieve a complete and timely fill. The proposed rule change will thereby contribute to perfecting the mechanism of a free and open market and a national market system and is also consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2010–67 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2010–67. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2010–67 and should be submitted on or before October 15, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–23924 Filed 9–23–10; 8:45 am]

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[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62945; File No. SR–BATS–2010–025]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend BATS Rule 11.8, Entitled "Obligations of Market Makers"

September 20, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on September 17, 2010, BATS Exchange, Inc. ("BATS" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend BATS Rule 11.8, which relates to the obligations of market makers registered with BATS ("Market Makers").

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt rules to enhance minimum quotation requirements for market makers. Under the proposal, the Exchange will require market makers for each stock in which they are registered to continuously maintain a two-sided quotation within a designated percentage of the National Best Bid ("NBB") and National Best Offer ("NBO") (or, if there is no NBB or NBO, the last reported sale). These enhanced market maker quotation requirements are intended to eliminate trade executions against market maker placeholder quotations traditionally priced far away from the inside market, commonly known as "stub quotes."

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

They are also intended to augment and work in relation to the single stock pause standards already in place on a pilot basis for stocks in the S&P 500 reg; Index,[3] the Russell 1000® Index, as well as a pilot list of Exchange Traded Products.[4]

Under the proposal, the Exchange will require registered market makers to enter and maintain quotes priced at no more than a certain percentage away from the national inside bid and offer. Permissible quotes are determined by the individual character of the security, the time of day in which the quote is entered, and other factors which are summarized below.

For issues subject to an individual stock trading pause, a permissible quote is determined by first looking at the applicable individual stock pause trigger percentage of the security and then reducing that number by 2%. Since currently the individual stock pause trigger percentage utilized by the primary listing markets is 10%, a market maker's quote in a such a security may not be more than 8% away from the NBBO as appropriate. Once a compliant quote is entered, it may rest without adjustment until such time as it moves to within ½ of 1% of the applicable stock pause trigger percentage (*i.e.,* currently 9.5%) whereupon the market maker must immediately move its quote back to at least the permissible default level of 8% away from the NBBO. During times in which a stock pause trigger percentage is not applicable (*e.g.,* before 9:45 a.m. and after 3:35 p.m.), a market maker must maintain a quote no further than 20% away from the inside (*i.e.,* it may rest without adjustment until it reaches 21.5%). In the absence of a NBB or NBO, the above calculations will remain the same, but will use the national last sale instead of the absent bid or offer.

For securities not subject to any individual stock trading pause, the proposal will a assume a hypothetical 32% stock pause trigger percentage, apply a 2% reduction, and require market makers in those issues to maintain quotes no more than 30% away from the NBBO. Like securities subject to stock trading pauses, once a compliant quote is entered, it may rest without adjustment until such time as it moves to within ½ of 1% of its applicable pause trigger percentage (31.5%) whereupon the market maker must immediately move its quote back to at least the permissible default level of 30%. These requirements shall apply to Regulation NMS securities during normal market hours.

Nothing in the above precludes a market maker from voluntarily quoting at price levels that are closer to the NBBO than required under the proposal.

The Exchange proposes to offer optional functionality to Exchange Market Makers to assist such Market Makers with the quotation obligations proposed by this filing.[5] Specifically, at 9:00 a.m. Eastern Time, the Exchange will extract information submitted by the Market Maker that provides specific quote instructions for the Exchange to enter a quote on the Market Maker's behalf consistent with proposed paragraph (d). The Exchange proposes to enter the initial bid and offer at the Designated Percentage and to cancel and replace the bid or offer if it drifts away from the NBBO to the Defined Limit or away from the Designated Percentage towards the NBBO by a number of percentage points determined by the Exchange. The Exchange will determine and publish this percentage in a circular distributed to Members from time to time; the Exchange wishes to retain this flexibility in the event it wishes to modify the number periodically in the future, for instance, to mitigate the amount of quotation information resulting from Exchange generated Market Maker quotes. If a bid or offer entered pursuant to proposed paragraph (e) is executed, the Exchange will re-enter a new bid or offer on behalf of a Market Maker. Bids and offers entered by the Exchange consistent with proposed paragraph (e) to replace a cancelled or executed quotation will be entered at the Designated Percentage away from the NBBO. Such orders will be posted by the Exchange as BATS Only Orders,[6] and will be maintained on the Exchange during Regular Trading Hours[7] unless cancelled by the Market Maker pursuant to the Exchange's Rules. In the event a Market Maker cancels the quotations entered by the Exchange in accordance with proposed paragraph (e), such Market Maker remains responsible for compliance with the requirements of paragraph (d).

In order to adopt the above-described market maker quotation obligations, the Exchange proposes to modify Rule 11.18(a)(1), which currently contains a two-sided quotation obligation, to cross-reference the above-described market maker quotation obligations in new paragraph (d). In addition, because proposed paragraph (d) makes clear that the obligations of that paragraph apply during Regular Trading Hours, the Exchange proposes to delete paragraph (b) of current Rule 11.8 related to when the current quoting obligations apply. Finally, the Exchange proposes deletion of current Rule 11.8(e), related to temporary withdrawal, because Exchange Rule 11.5(d) already provides a Market Maker with the ability to withdraw his or her status as a Market Maker and Rule 11.7(b) already provides a Market Maker with the ability to terminate his or her registration in a security. The Exchange believes that these mechanisms are sufficient for a Market Maker to withdraw or terminate its registration in a security or as a Market Maker without the need for an additional provision related to withdrawal.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[8] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[9] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed rule change is also designed to support the principles of Section 11A(a)(1)[10] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes uniformity across markets concerning minimum market maker quotation requirements. The Exchange believes that the proposed optional functionality to assist Exchange Market Makers in maintaining continuous, two-sided limit orders in the securities in which they are registered will encourage Market Makers to remain registered with and trade on the Exchange, thus providing valuable liquidity to the Exchange; at the same time, the Exchange believes that the proposed functionality will keep Exchange generated quotations within reasonable reach of the NBBO

[3] *See* Exchange Act Release No. 62340 (June 21, 2010), 75 FR 36768 (June 28, 2010) (SR–BATS–2010–014).

[4] *See* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–BATS–2010–018).

[5] *See* e-mail from Anders Franzon, Associate General Counsel, BATS, to David Liu, Senior Special Counsel, and Andrew Madar, Special Counsel, Commission, dated September 17, 2010.

[6] As defined in Rule 11.9(c)(4).

[7] Defined in Rule 1.5(w) as 9:30 a.m. to 4 p.m. Eastern Time.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k–1(a)(1).

and that the elimination of "stub quotes" is important for the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BATS–2010–025 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2010–025. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BATS–2010–025 and should be submitted on or before October 15, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–23955 Filed 9–23–10; 8:45 am]

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[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62946; File No. SR–NYSEArca–2010–83]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change Amending NYSE Arca Equities Rule 7.23 To Adopt Pricing Obligations for ETP Holders Who Are Registered as Market Makers

September 20, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 17, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.23 to adopt pricing obligations for ETP Holders who are registered as Market Makers. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 7.23 to adopt pricing obligations for Market Makers. Under the proposal, the Exchange will require Market Makers to continuously maintain two-sided Q Order trading interest within a Designated Percentage[3] from the National Best Bid and National Best Offer ("NBBO") for each security in which they are registered. These pricing obligations are intended to eliminate trade executions against Market Maker placeholder Q Orders traditionally priced far away from the inside market, commonly known as "stub quotes." They are also intended to augment and work in conjunction with Trading Pauses in individual securities due to extraordinary market volatility, which are already in place on a pilot basis for stocks in the S&P 500® Index and the Russell 1000® Index, under Exchange Rule 7.11.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term Designated Percentage is defined in proposed Rule 7.23(a)(1)(B)(iii).

[4] *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–NYSEArca–2010–41). *See also* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–NYSEArca–2010–61). *See also* Rule 7.11.

Under the proposal, the Exchange will require Market Makers to enter and maintain Q Orders priced no more than the Designated Percentage away from the NBBO. Permissible Q Orders are determined by the individual character of the security, the time of day in which the Q Order is entered, and other factors which are summarized below.

For purposes of the proposed rule, Designated Percentage shall mean the Threshold Move as defined under Rule 7.11 less two (2) percentage points. Because the Threshold Move across all exchanges is currently 10%, a Market Maker's Q Order in a security may not be more than 8% away from NBBO. Once a permissible Q Order is entered, it may rest without adjustment until such time as it is more than the Defined Limit away from the NBBO. For purposes of the proposed rule, the Designated Limit shall mean the Threshold Move as defined under Rule 7.11 less one-half percentage point (*i.e.,* 9.5%). If the Market Maker's resting interest exceeds the Defined Limit, the Market Maker must enter new interest at a price not more than the Designated Percentage of 8% away from the NBBO (or identify to the Corporation current resting interest that satisfies the Market Maker's obligation). For times during the trading day when a Trading Pause is not in effect under Rule 7.11 (*e.g.,* before 6:45 a.m. and after 12:35 p.m. Pacific Time), the Designated Percentage calculation will assume a trigger percentage of 22%. Therefore, a Market Maker must maintain a Q Order no further than 20% away from the NBBO and the Q Order may rest without adjustment until it is more than 21.5% from the NBBO. In the absence of an NBBO, the above calculations will remain the same, but will use the last reported sale from the single plan processor responsible for consolidation of information for the security pursuant to Rule 603 of Regulation NMS.[5]

For securities that are not subject to Trading Pauses, the Designated Percentage will assume a trigger percentage of 32% and apply the same 2% reduction. Thus, Market Makers registered in those securities shall be required to maintain Q Order interest no more than 30% away from NBBO. As with securities subject to Trading Pauses, once a permissible Q Order is entered it may rest without adjustment until such time as it becomes more than the Defined Limit away from the NBBO (31.5%), whereupon the Market Maker must enter new interest at a price not more than the Designated Percentage of 30% away from the NBBO (or identify to the Corporation current resting interest that satisfies the Market Maker's obligation). The Exchange proposes that these requirements shall apply to NMS stocks (as defined in Rule 600 under Regulation NMS)[6] during the trading day.

Nothing in the proposal shall preclude a Market Maker from entering Q Order interest at price levels that are closer to the NBBO than the levels required under the proposal.

The Exchange also proposes to amend Rule 7.31 (Orders and Modifiers) with regards to Q Orders. A Q Order is a limit order submitted to the NYSE Arca Marketplace by a Market Maker, and designated by a Market Maker as a "Q Order" through such means as the Corporation shall specify.[7] Market Makers utilize Q Orders to satisfy their obligation to maintain continuous, two-sided interest in securities in which they are registered to trade. The proposed amendment to Rule 7.23 requires that the "standard Q," which is currently defined as having a price of $0.01 bid and 2 times the previous day's close for the offer, be eliminated as an available order type.[8] The Exchange proposes to reserve this subsection for possible future use.[9]

The Exchange also proposes to include language at the end of Rule 7.31(k) stating that "nothing in [the] Rule shall be construed to relieve a Market Maker of any of its obligations pursuant to Rule 7.23." The Exchange believes that the addition of this rule text will make clear that, while certain Q Orders may be submitted and/or repost with prices that are beyond the Designated Percentages and Defined Limits, respectively, proposed in Rule 7.23, Market Makers shall remain obligated to satisfy their Two-Sided Obligation, as proposed in Rule 7.23(a)(1).

The Exchange also proposes to make certain non-substantive stylistic changes to Rule 7.23(a)(2)–(a)(5). These proposed changes do not alter the substance or form of the existing rule text.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change also is consistent with the principles of Section 11A(a)(1)[12] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes the proposed rule change meets these requirements in that it promotes transparency and uniformity concerning pricing obligations across markets for certain market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[5] 17 CFR 240.603.

[6] 17 CFR 240.600.

[7] *See* Rule 7.31(k)(1).

[8] *See* Rule 7.31(k)(1)(A)(3).

[9] The Exchange represents that within 90 days from the date of this filing it will submit a proposed rule change with the Commission to either remove the text of Rule 7.31(k)(1)(A)(4), which states that a "Q Order entered with reserve size * * * will automatically repost with the original display size and $10 below the original bid or $10 above the original offer, but never below $0.01," or amend such text so that a Q Order entered with reserve size will repost with a price consistent with the Designated Percentage proposed herein.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78k–1(a)(1).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–83 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–83. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEArca–2010–83 and should be submitted on or before October 15, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–23969 Filed 9–23–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62941; File No. SR–NYSEAmex–2010–94]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Add Certain Rules to the List of Exchange Rule Violations and Fines Applicable Thereto

September 20, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 9, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Disciplinary Rule 476A to add certain rules to Part 1A: List of Exchange Rule Violations and Fines Applicable Thereto ("Minor Rule Violation Plan"). The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Amex Disciplinary Rule 476A to add certain rules to Part 1A of its Minor Rule Violation Plan to reflect approved changes to Exchange rules.[3] Specifically, in connection with the Exchange's process to harmonize certain Exchange rules with rules of the Financial Industry Regulatory Authority, Inc. ("FINRA"), the Exchange has deleted certain Exchange rules and replaced them with new rules that have different rule numbers. The Exchange proposes this rule filing to add the new rule references to the Minor Rule Violation Plan for those rules that have been added as part of the FINRA harmonization process. The Exchange will not delete the old rule references in the Minor Rule Violation Plan so that violations of prior Exchange rules that occurred before the amendments described below took effect still fall under the jurisdiction of the Minor Rule Violation Plan.

In connection with the harmonization process, the Exchange adopted the following new NYSE Amex Equities Rules, which correspond with the same-numbered consolidated FINRA Rules, and which replaced prior Exchange rules:

• Rule 2150—NYSE Amex Equities (Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts) replaced old Rules 352(a)–(d)—NYSE Amex Equities;

• Rule 3130—NYSE Amex Equities (Annual Certification of Compliance and Supervisory Processes) replaced, in relevant part, old Rules 342.30(d)– and (e)-NYSE Amex Equities and Rule Interpretation 311(b)(5)—NYSE Amex Equities;

• Rule 3310—NYSE Amex Equities (Anti-Money Laundering Compliance Program) replaced old Rule 445—NYSE Amex Equities;

• Rule 4110—NYSE Amex Equities (Capital Compliance) replaced, in

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[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange's corporate affiliate, New York Stock Exchange LLC ("NYSE"), submitted a companion rule filing proposing corresponding amendments to NYSE Rule 476A. *See* SR–NYSE–2010–66.

relevant part, old Rules 312(h)– and 313-NYSE Amex Equities;

- Rule 4521—NYSE Amex Equities (Notifications, Questionnaires and Reports) replaced, in relevant part, old Rule 421—NYSE Amex Equities;
- Rule 4560—NYSE Amex Equities (Short-Interest Reporting) replaced old Rules 421(1)– and 421.10–NYSE Amex Equities; and
- Rule 5190—NYSE Amex Equities (Notification Requirements for Offering Participants) replaced old Rule 392—NYSE Amex Equities.[4]

These old Rules, or certain provisions thereof, are subject to the Exchange's Minor Rule Violation Plan under NYSE Amex Disciplinary Rule 476A. At the time the new Rules were adopted to replace the old Exchange Rules, however, they were not added to the Exchange's Minor Rule Violation Plan. The Exchange therefore proposes to update the Exchange's Minor Rule Violation Plan under NYSE Amex Disciplinary Rule 476A by adding the new rule references identified above.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with, and furthers the objectives of, Section 6(b)(5) of the Act,[5] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also furthers the objectives of Section 6(b)(6) of the Act,[6] in that it provides for appropriate discipline for violations of Exchange rules and regulations.

The Exchange believes that the proposed rule change will provide the Exchange with greater regulatory flexibility to enforce the prescriptions of certain rules in a more informal manner while also preserving the Exchange's discretion to seek formal discipline for more serious transgressions as warranted.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(3) thereunder.[8] Because the proposed rule change is concerned solely with the administration of the Exchange, the proposed rule change has become immediately effective upon filing pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(3) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2010–94 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–94. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2010–94 and should be submitted on or before October 15, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–23911 Filed 9–23–10; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice: 7163]

U.S. Department of State Advisory Committee on Private International Law: Notice of Annual Meeting

The Department of State's Advisory Committee on Private International Law (ACPIL) will hold its annual meeting on developments in private international law on Thursday, October 28 and Friday, October 29, 2010 in Washington, DC. The meeting will be held at the Gewirz Student Center, Georgetown University Law Center, 600 New Jersey Avenue, NW., Washington, DC 20001.

[4] *See* Securities Exchange Act Release Nos. 59975 (May 26, 2009), 74 FR 26449 (June 2, 2009) (SR–NYSEAltr–2009–26) (adopting, *inter alia,* NYSE Amex Equities Rules 3130, 4560, 5190); 61157 (December 11, 2009), 74 FR 67939 (December 21, 2009) (SR–NYSEAmex–2009–88) (adopting NYSE Amex Equities Rule 2150); 61272 (December 31, 2009), 75 FR 1099 (January 8, 2010) (SR–NYSEAmex–2009–99) (adopting NYSE Amex Equities Rule 3310); 61556 (February 22, 2010), 75 FR 9468 (March 2, 2010) (SR–NYSEAmex–2010–13) (adopting, *inter alia,* NYSE Amex Equities Rules 4110, 4521). *See also* NYSE and NYSE Amex Information Memoranda 09–24 (June 2, 2009); 10–09 (February 18, 2010); 10–12 (March 11, 2010).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(3).

[9] 17 CFR 200.30–3(a)(12); 200.30–3(a)(44).

The program is scheduled to run from 9:30 a.m. to 5 p.m. on Thursday and from 9 a.m. to 3 p.m. on Friday.

Time permitting, the discussion is expected to focus on developments in a number of areas, e.g., federalism issues in implementing private international law conventions (including the Hague Convention on Choice of Court Agreements, the UNCITRAL E-Commerce and Letter of Credit Conventions, and others); globalization and cross-border corporate insolvency; international arbitration; investment securities, market stability and treaty law; international family law; private international law initiatives in the OAS; on-line dispute resolution; and treaty-based finance law. We encourage active participation by all those attending.

Documents on these subjects are available at *http://www.hcch.net*; *http://www.uncitral.org*; *http://www.unidroit.org*; *http://www.oas.org*, and *http://www.nccusl.org*. We may, by e-mail, supplement those with additional documents.

Please advise as early as possible if you plan to attend. The meeting is open to the public up to the capacity of the conference facility, and space will be reserved on a first come, first served basis. Persons who wish to have their views considered are encouraged, but not required, to submit written comments in advance. Those who are unable to attend are also encouraged to submit written views. Comments should be sent electronically to *smeltzertk@state.gov*. Those planning to attend should provide name, affiliation and contact information to Trish Smeltzer at 703–812–2382 or Niesha Toms at 703–812–2353, or by e-mail to *tomsnn@state.gov*. You may also use those contacts to obtain additional information. A member of the public needing reasonable accommodation should advise those same contacts not later than October 21st. Requests made after that date will be considered, but might not be able to be fulfilled.

September 15, 2010.

Keith Loken,

Assistant Legal Adviser, Office of Private International Law, Office of the Legal Adviser, Department of State.

[FR Doc. 2010–23978 Filed 9–23–10; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Los Angeles and San Bernardino Counties, CA; Notice of Intent

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Withdrawal/Revised Notice of Intent (NOI).

SUMMARY: The FHWA, on behalf of the California Department of Transportation (Caltrans), is issuing this notice to advise the public that the Notice of Intent to prepare an Environmental Impact Statement (EIS) for the proposed New State Route 138 project in Los Angeles County, California (**Federal Register** Vol. 74, No. 16) and the Notice of Intent to prepare an Environmental Impact Statement (EIS) for the proposed High Desert Corridor project, State Route 18, in San Bernardino County, California (**Federal Register** Vol. 72, No. 197) are being withdrawn. In addition, this notice is being issued to advise the public that a draft EIS will be prepared for a proposed expanded High Desert Corridor—New State Route 138 project in Los Angeles and San Bernardino Counties, California.

DATES: Public scoping meetings will be held in:

(1) Palmdale, CA on September 27, 2010, 6 p.m. to 8 p.m.

(2) Lancaster, CA on September 28, 2010, 6 p.m. to 8 p.m.

(3) Apple Valley, CA on September 29, 2010, 6 p.m. to 8 p.m.

(4) Victorville, CA on September 30, 2010, 6 p.m. to 8 p.m.

ADDRESSES:

(1) Palmdale—Larry Chimbole Cultural Center, 38350 North Sierra Highway, Palmdale, CA 93550.

(2) Lancaster—Lancaster City Hall, Emergency Operations Center, 44933 Fern Avenue, Lancaster, CA 93534.

(3) Apple Valley—Town of Apple Valley Development Services Building Conference Center, 14955 Dale Evans Parkway, Apple Valley, CA 92307.

(4) Victorville—City of Victorville Conference Room D, 14343 Civic Drive, Victorville, CA 92393.

FOR FURTHER INFORMATION CONTACT: Ronald Kosinski, Deputy District Director, California Department of Transportation District 7 Division of Environmental Planning, 100 South Main Street, Mail Stop 16A, Los Angeles, CA 90012.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the FHWA assigned, and Caltrans assumed, environmental responsibilities for these projects pursuant to 23 U.S.C. 327. Caltrans, as the delegated National Environmental Policy Act (NEPA) lead agency, initiated studies on the proposed New State Route 138 and High Desert Corridor, State Route 18 projects. NOIs were published in the **Federal Register** on January 27, 2009 (Vol. 74, No. 16) and October 12, 2007 (Vol. 72, No. 197). During the course of conducting studies and coordinating with regulatory and resource agencies for the proposed projects, it was determined that the projects should be combined into one larger High Desert Corridor—New State Route 138 project. A Draft Environmental Impact Statement will be prepared for a proposal to construct a new freeway/expressway, and possibly a toll way, between SR–14 in Los Angeles County and SR–18 in San Bernardino County. The proposed route would run primarily in an east-west direction and extend for approximately 63 miles; it would roughly follow the alignment of the Avenue P–8 corridor near SR–14 in Los Angeles County and Air Expressway near I–15 in San Bernardino County. East of I–15, the proposed route would turn south until it terminates at SR–18. The development of this corridor is considered necessary to provide for the existing and projected traffic demand attributed to large-scale growth and increasing population in the Antelope, Victor and Apple Valley areas of Los Angeles and San Bernardino Counties. This growth has resulted in inadequate capacity and accessibility along the existing east-west trending roadways as well as an increase in demand for goods movement corridors and access to regional airports.

Alternatives under consideration are: (1)—No-Build; (2)—Transportation System Management/Transportation Demand Management (TSM/TDM). This includes various operational investments, policies, and easily implemented, low capital cost improvements aimed at improving goods movement, passenger auto and transit travel, and reducing the environmental impacts of transportation for cities and operations in the High Desert Corridor study area; (3)—Freeway/Expressway. This would consist of a route with a controlled-access freeway in some areas and an expressway in others, depending on what is warranted by traffic demand. Interchange locations will be determined based upon traffic projections. Three variations along the main alignment of this alternative will be considered. In Variation A, the freeway/expressway would run slightly south of the main alignment, approximately between 15th St. East and Little Rock Wash near Palmdale. In Variation B, the freeway/expressway would run slightly south of the main alignment between Oasis Rd. and Caughlin Rd. East of the county line. In Variation C, the freeway/expressway would swing south of the main alignment to tie into SR–18 near Rimrock Rd.; (4)—Freeway/Toll Way. This would consist of engineering geometrics similar to Alternative 3 with alterations made in coordination with a Public Private Partnership (P3) analysis. Variations A, B and C would also be considered; (5)—Avenue P–8 Corridor, SR–138 and SR–18 Improvements. This would consist of engineering geometrics similar to Alternative 3 between SR–14 and approximately 125th St. East. From 125th St. East, the route would curve south until it joins the existing SR–138. The existing SR–138 and SR–18 would be widened between approximately 146th St. East and I–15. One of the segments east of I–15, as described in Alternative 3, would also be built as part of this alternative; (6)—Freeway/Expressway with right-of-way for a potential High Speed Rail facility. This would consist of engineering geometrics similar to Alternative 3 with the consideration of additional right-of-way for a High Speed Rail (HSR) facility. If an HSR facility is proven to be viable, its engineering and environmental analysis would be funded by others at some later time, and; (7)—Freeway/Toll Way with right-of-way for a potential High Speed Rail facility. This would consist of engineering geometrics similar to Alternative 4 with the consideration of additional right-of-way for a High Speed Rail (HSR) facility. This alternative would include a P3 analysis. If a HSR facility is proven to be viable, its engineering and environmental analysis would be funded by others at some later time.

It is anticipated that the proposed project may require the following federal approvals and permits: A Biological Opinion from the United States Fish and Wildlife Service, approval of a PM10 and PM2.5 Hot Spot Analysis by the Conformity Working Group for transportation conformity determination under the Clean Air Act, Section 401, 402 and 404 permits under the Clean Water Act, and a Farmland Conversion Impact Rating under the Farmland Protection Policy Act.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, Participating Agencies, Tribal governments, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. NEPA requires the lead agency to conduct an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. In compliance with NEPA, formal scoping meetings will be held at the dates, times and locations as described above. Public notice will be given of the times and place of each meeting. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the draft EIS should be directed to Caltrans at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 20, 2010.

Cindy Vigue,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. 2010–23920 Filed 9–23–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

TIME AND DATE: October 14, 2010, 12 noon to 3 p.m., Eastern Daylight Time.

PLACE: This meeting will take place telephonically. Any interested person may call 877.768.0032 passcode 4856462 to participate in this meeting by telephone.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: September 21, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–24183 Filed 9–22–10; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 20, 2010

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before October 25, 2010 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0015.

Type of Review: Revision of a currently approved collection.

Title: United States Estate (and Generation-Skipping Transfer) Tax Return.

Form: 706 and schedules.

Abstract: Form 706 is used by executors to report and compute the Federal Estate Tax imposed by IRC section 2001 and the Federal GST tax imposed by IRC section 2601. IRS uses the information to enforce these taxes and to verify that the tax has been properly computed.

Respondents: Individuals or households.

Estimated Total Burden Hours: 2,046,350 hours.

OMB Number: 1545–0026.

Type of Review: Extension without change to a currently approved collection.

Title: Return by a U.S. Transferor of Property to a Foreign Corporation.

Form: 926.

Abstract: Form 926 is filed by any U.S. person who transfers certain tangible or intangible property to a foreign corporation to report information required by section 6038B.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 29,902 hours.

OMB Number: 1545–1165.

Type of Review: Extension without change to a currently approved collection.

Title: Tax Information Authorization.

Form: 8821.

Abstract: Form 8821 is used to appoint someone to receive or inspect certain tax information. Data is used to identify appointees and to ensure that confidential information is not divulged to unauthorized persons.

Respondents: Individuals or households.

Estimated Total Burden Hours: 140,300 hours.

OMB Number: 1545–2055.

Type of Review: Extension without change to a currently approved collection.

Title: Energy Efficient Appliance Credit.

Form: 8909.

Abstract: Form 8909, Energy Efficient Appliance Credit, was developed to carry out the provisions of Code section 45M. This section was added by section 1334 of the Energy Policy Act of 2005 (Pub. L. 109–58). This form provides a means for the eligible manufacturer/taxpayer to compute the amount of, and claim, the credit.

Respondents: Private Sector: Not-for-profit institutions.

Estimated Total Burden Hours: 131 hours.

Bureau Clearance Officer: R. Joseph Durbala, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 6129, Washington, DC 20224; (202) 622–3634.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2010–23991 Filed 9–23–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Terrorism Risk Insurance Program; Program Loss Reporting

AGENCY: Departmental Offices, Terrorism Risk Insurance Program Office, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Terrorism Risk Insurance Program Office is seeking comments regarding forms on Program Loss Reporting.

DATES: Written comments should be received on or before November 23, 2010 to be assured of consideration.

ADDRESSES: Submit comments by e-mail to *triacomments@do.treas.gov* or by mail (if hard copy, preferably an original and two copies) to: Terrorism Risk Insurance Program, Public Comment Record, Suite 2100, Department of the Treasury, 1425 New York Ave., NW., Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted electronically. All comments should be captioned with "Program Loss Reporting—Comments". Please include your name, affiliation, address, e-mail address and telephone number in your comment. Comments will be available for public inspection by appointment only at the Reading Room of the Treasury Library. To make appointments, call (202) 622–0990 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to: Terrorism Risk Insurance Program Office at (202) 622–6770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

OMB Number: 1506–0200.

Title: Terrorism Risk Insurance Program—Program Loss Reporting.

Form: Treasury TRIP–01 [Initial Notice of Insured Loss] and TRIP–02 [Certification of Loss] and Supporting Schedules.

Abstract: Sections 103(a) and 104 of the Terrorism Risk Insurance Act of 2002 (Public Law 107–297) authorize the Department of the Treasury to administer and implement the temporary Terrorism Risk Insurance Program established by the Act. In 31 CFR part 50, subpart F (Sec. 50.50–50.55) Treasury established requirements and procedures for insurers that file claims for payment of the Federal share of compensation for insured losses resulting from a certified act of terrorism under the Act. Insurers are required to submit an Initial Notice of Insured Loss on Form TRIP–01 and Initial and Supplementary Certifications of Loss on Form TRIP–02.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit, Federal Government.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 42 hours.

Estimated Total Annual Burden Hours: 4,200 hours.

Request for Comments: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Jeffrey S. Bragg,

Director, Terrorism Risk Insurance Program.

[FR Doc. 2010–23986 Filed 9–23–10; 8:45 am]

BILLING CODE 4810–25–P

Federal Register

Friday,
September 24, 2010

Part II

Federal Reserve System

12 CFR Part 226

Regulation Z; Truth in Lending; Proposed Rules, Interim Rule, Final Rules

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Docket No. R–1366]

Regulation Z; Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule; request for public comment.

SUMMARY: The Board is publishing for comment an interim rule amending Regulation Z, which implements the Truth in Lending Act (TILA). The interim rule implements certain requirements of the Mortgage Disclosure Improvement Act of 2008, which amended TILA. The amendments and this interim rule require creditors extending consumer credit secured by real property or a dwelling to disclose certain summary information about interest rates and payment changes, in a tabular format, as well as a statement that consumers are not guaranteed to be able to refinance their transactions in the future. The interest rate and payment summary tables replace the payment schedule previously required as part of the TILA disclosure for mortgage transactions. Disclosures for non-mortgage, closed-end consumer credit will continue to include the current payment schedule.

DATES: This interim rule is effective October 25, 2010. Compliance with its requirements is optional, however, until January 30, 2011; its requirements are mandatory for transactions for which an application for credit is received by the creditor on or after that date. Comments on this interim rule must be received on or before November 23, 2010.

ADDRESSES: You may submit comments, identified by Docket No. R–1366, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Address to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.,) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Paul Mondor, Senior Attorney, or Kathleen C. Ryan, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

A. TILA and Regulation Z

Congress enacted the Truth in Lending Act (TILA) based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. One of the purposes of TILA is to provide meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and avoid the uninformed use of credit.

TILA's disclosures differ depending on whether credit is an open-end (revolving) plan or a closed-end (installment) loan. TILA also contains procedural and substantive protections for consumers. TILA is implemented by the Board's Regulation Z. An Official Staff Commentary interprets the requirements of Regulation Z. By statute, creditors that follow in good faith Board or official staff interpretations are insulated from civil liability, criminal penalties, and administrative sanction.

B. MDIA Amendments to TILA and Regulation Z

On July 30, 2008, Congress enacted the Mortgage Disclosure Improvement Act of 2008 (the MDIA).[1] The MDIA requires transaction-specific TILA disclosures to be provided within three business days after an application is received and before the consumer has paid a fee, other than a fee for obtaining the consumer's credit history.[2] In addition, the MDIA requires creditors to mail or deliver early TILA disclosures at least seven business days before consummation and provide corrected disclosures if the disclosed APR changes in excess of a specified tolerance. The consumer must receive the corrected disclosures no later than three business days before consummation. The MDIA also expanded coverage of the early disclosure requirement to include loans secured by a dwelling even when it is not the consumer's principal dwelling. The Board implemented these MDIA requirements in final rules published May 19, 2009, and effective July 30, 2009. 74 FR 23289, May 19, 2009 (MDIA Final Rule).

The MDIA also requires disclosure of payment examples if the loan's interest rate or payments can change. Such disclosures are to be formatted in accordance with the results of consumer testing conducted by the Board. And the MDIA requires disclosure of a statement that there is no guarantee the consumer will be able to refinance the transaction in the future. Those provisions of the MDIA become effective on January 30, 2011, or any earlier compliance date established by the Board. This interim rule implements those MDIA provisions.

C. The Board's Review of Closed-End Credit Rules

The Board's current review of Regulation Z was initiated in December 2004 with an advance notice of proposed rulemaking. 69 FR 70925, Dec. 8, 2004. At that time, the Board announced its intent to conduct its review of Regulation Z in stages, focusing first on the rules for open-end (revolving) credit accounts that are not home-secured, chiefly general-purpose credit cards and retailer credit card plans. In December 2008, the Board approved final rules for open-end credit that is not home-secured. 74 FR 5244, Jan. 29, 2009. In May 2009, Congress enacted the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act), which amended TILA's provisions for open-end credit. The Board approved final rules

[1] The MDIA is contained in Sections 2501 through 2503 of the Housing and Economic Recovery Act of 2008, Public Law 110–289, enacted on July 30, 2008. The MDIA was later amended by the Emergency Economic Stabilization Act of 2008, Public Law 110–343, enacted on October 3, 2008.

[2] To ease discussion, the description of the closed-end mortgage disclosure scheme includes MDIA's amendments to TILA and the disclosure timing requirements implemented by the Board in 2008 through a final rule that preceded MDIA's enactment. 73 FR 44522, July 30, 2008 (2008 HOEPA Final Rule). The MDIA codified some of the 2008 HOEPA Final Rule and expanded its coverage and its requirements. The MDIA also made these requirements effective July 30, 2009.

implementing the Credit Card Act in January and June 2010. 75 FR 7658, Feb. 22, 2010; 75 FR 37526, June 29, 2010.

Beginning in 2007, the Board proposed revisions to the rules for home-secured credit in several phases. In 2007, the Board proposed rules for closed-end higher-priced mortgage loans secured by the consumer's principal dwelling, leading to the HOEPA Final Rule. On May 7, 2009, the Board adopted the MDIA Final Rule for closed-end loans secured by a dwelling. On July 23, 2009, the Board issued a proposed rule to revise the rules for disclosures for closed-end credit secured by real property or a consumer's dwelling. 74 FR 43232, Aug. 26, 2009 (2009 Closed-End Proposal). The Board also issued a proposed rule to revise the rules for disclosures for open-end lines of credit secured by a dwelling. 74 FR 43428, Aug. 26, 2009. Concurrently with this interim rule, the Board is publishing another proposed rule that would add and revise rules for rescission, reverse mortgages, and modifications to existing closed-end mortgage loans (2010 Closed-End Proposal).

D. Consumer Testing

A principal goal for the Regulation Z review is to produce revised and improved mortgage disclosures that consumers will be more likely to understand and use in their decisions, while at the same time not creating undue burdens for creditors. In 2007, the Board retained a research and consulting firm (ICF Macro) that specializes in designing and testing documents to conduct consumer testing to help the Board's review of mortgage rules under Regulation Z. Working closely with the Board, ICF Macro conducted several tests in different cities throughout the United States. The testing consisted of four focus groups and eleven rounds of one-on-one cognitive interviews. The goals of these focus groups and interviews were to learn how consumers shop for mortgages and what information consumers read when they receive mortgage disclosures, and to assess their understanding of such disclosures.

The consumer testing groups contained participants with a range of ethnicities, ages, educational levels, and mortgage-shopping behaviors, including first-time mortgage shoppers, prime and subprime borrowers, and consumers who had obtained one or more closed-end mortgages. For each round of testing, ICF Macro developed a set of model disclosure forms to be tested. Interview participants were asked to review model forms and provide their reactions, and were then asked a series of questions designed to test their understanding of the content. Data were collected on which elements and features of each form were most successful in providing information clearly and effectively. The findings from each round of interviews were incorporated in revisions to the model forms for the following round of testing. Several of the model forms included in the 2009 Closed-End Proposal were developed through the testing. A report summarizing the results of the testing is available on the Board's public Web site: *http://www.federalreserve.gov/boarddocs/meetings/2009/20090723/Full%20Macro%20CE%20Report.pdf.*

II. Summary of the Interim Rule

MDIA requires creditors to disclose examples of rates and payments, including the maximum rate and payment, for loans with variable rates or payments. MDIA also requires creditors to disclose a statement that consumers should not assume they can refinance their loans. The 2009 Closed-End Proposal included provisions that would implement these MDIA requirements, including provisions interpreting the statute's requirement that creditors disclose "examples" of payment adjustments other than the maximum during the life of the loan and the "no-guarantee-to-refinance" statement. Those provisions, proposed §§ 226.38(c) and 226.38(f)(3), respectively, would require the TILA disclosure to contain certain interest rate and payment summary tables and the "no-guarantee-to-refinance" statement. *See* 74 FR 43232, 43334–35 and 43337, Aug. 26, 2009. The Board does not expect to finalize that proposal, however, before the January 30, 2011 statutory effective date of the MDIA requirement to disclose examples of payment adjustments. Accordingly, this interim rule implements the MDIA requirements now, so that mortgage creditors will have the guidance necessary to comply with them by January 30, 2011. This interim rule adopts the provisions of the 2009 Closed-End Proposal requiring disclosure of interest rate and payment summary tables as proposed, except as discussed below and with minor modifications for clarity.

Under this interim rule, creditors will be required to disclose in a tabular format the contract interest rate together with the corresponding monthly payment, including any escrows for taxes and property and/or mortgage insurance. Special disclosure requirements are imposed for adjustable-rate or step-rate loans to show the interest rate and payment at consummation, the maximum interest rate and payment at any time during the first five years after consummation, and the maximum interest rate and payment possible during the life of the loan. Additional special disclosures are required for loans with negatively-amortizing payment options, introductory interest rates, interest-only payments, and balloon payments. Finally, the interim rule requires the disclosure of a statement that there is no guarantee the consumer will be able to refinance the loan with a new transaction in the future.

III. Legal Authority

A. Rulemaking Authority

TILA Section 105(a) directs the Board to prescribe regulations to carry out the Act's purposes. 15 U.S.C. 1604(a). TILA also authorizes the Board to issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with the act, or prevent circumvention or evasion. MDIA also specifically provides that the disclosures shall be in accordance with the Board's implementing regulations, as discussed above.

B. Authority To Issue Interim Rule

The Administrative Procedures Act (APA), 5 U.S.C. 551 *et seq.,* generally requires public notice before promulgation of regulations. *See* 5 U.S.C. 553(b). The 2009 Closed-End Proposal provided the public with notice and an opportunity to comment on the Board's proposed disclosure changes, including the proposed interest rate and payment summary tables. The Board is now adopting only that aspect of the 2009 Closed-End Proposal. The Board therefore believes this action complies with the APA's public notice and opportunity to comment requirement. The Board is adopting the provisions concerning interest rates and payments as an interim rule, rather than as a final rule, because the Board intends to conduct additional testing of this and other disclosure requirements, including quantitative testing, and may revise these interim provisions further in light of further testing results. The interim rule will permit further public comment while also giving the provisions effect so that creditors will have the guidance they need and the time to implement it by January 30, 2011, as discussed above.

C. Authority for October 25, 2010 Effective Date

TILA Section 105(d) generally provides that a regulation requiring any disclosure that differs from the disclosures previously required shall have an effective date no earlier than "that October 1 which follows by at least six months the date of promulgation." 15 U.S.C. 1604(d). This interim rule substitutes the interest rate and payment summary tables for the existing payment schedule in the TILA disclosure requirements, effective October 25, 2010 and with compliance mandatory as of January 30, 2011. The new requirements will take effect, however, on January 30, 2011 pursuant to the MDIA, with or without this rulemaking. To the extent that the interim rule contains disclosure requirements that are already in effect on January 30, 2011 under the statute, TILA Section 105(d) does not apply. Moreover, the Board believes that the effective date mandated by the MDIA for the specific disclosures required under TILA Section 128(b)(2)(C) overrides the general provision in TILA Section 105(d).

IV. Overview of Comments Received on the Interest Rate and Payment Summary Tables

The Board received over 6,000 comments on the 2009 Closed-End Proposal. The great majority of those, however, were from mortgage brokers, loan officers, and other mortgage industry representatives that commented exclusively on the proposed regulation of loan originator compensation. Those commenters who commented on proposed § 226.38, which contained the new disclosure requirements, focused their comments more extensively on other provisions in the August 2009 Closed-End Proposal, not on §§ 226.38(c) and 226.38(f)(3). Consequently, the Board received little comment specifically on the proposed interest rate and payment summary tables, and no commenters addressed the proposed no guarantee to refinance statement.

Six consumer and community groups commented jointly on the proposal. Regarding the interest rate and payment summary proposal, they expressed strong support for including a statement of the maximum payment. These commenters indicated that the table was flawed, however, as applied to negative amortization products because the resulting table is too different to permit comparison between amortizing and negatively amortizing adjustable-rate mortgages. The consumer groups also stated that the payments in the table should reflect estimated taxes and insurance regardless of whether an escrow account is required because the need for monthly budgeting for those obligations should be emphasized. These groups also criticized the manner in which the maximum possible payment was calculated for the sample forms included in the proposal.

Mortgage creditors offered suggested revisions to the proposed interest rate and payment summary requirements, including a revision that would emphasize the fact that escrow amounts are estimated. Most creditors, though not all, agreed with the consumer advocates that estimated taxes and insurance should be included regardless of whether an escrow account is required. Some strongly questioned the need for some of the graphical details of the model forms, such as the large arrow pointing downward to highlight the additional amount borrowed by making only minimum payments on a negative amortization loan and the use of shading and highlighting. One bank indicated that the content of the table would be duplicative of the information presented in the good faith estimate of settlement costs and the HUD–1 settlement statement required under Regulation X, which implements the Real Estate Settlement Procedures Act (RESPA), but that the information is presented differently. This commenter also questioned the inclusion of taxes and insurance in any but the initial payment disclosed because of the fact that those amounts can change significantly over the life of the loan.

In general, as discussed below, the Board has considered the comments received and is adopting the interest rate and payment summary table and the no-guarantee-to-refinance statement as proposed, with minimal modification. As stated above, the Board intends to conduct additional testing and will consider the comments further as part of the testing process. The Board is reluctant at this time, however, to make significant changes to the format and content of the tables without the benefit of such testing. To afford guidance on how to comply with the MDIA requirements by the January 30, 2011 statutory effective date, the Board is adopting these requirements substantially as proposed. The Board also seeks additional comment on the summary tables under this interim rule.

V. Section-by-Section Analysis

Section 226.17 General Disclosure Requirements

17(a) Form of Disclosures

17(a)(1)

Comment 17(a)(1)–1 provides guidance on the general requirement that the TILA disclosures be clear and conspicuous. The comment currently states that no minimum type size is mandated for the disclosures. This interim rule amends the comment by adding a parenthetical exception to that general rule, to conform to the fact that new § 226.18(s), discussed below, requires a minimum 10-point type size.

Section 226.18 Content of Disclosures

18(g) Payment Schedule

The interim rule makes a conforming amendment to § 226.18(g). That section imposes the current payment schedule disclosure for closed-end consumer credit. As discussed below, § 226.18(s) replaces the payment schedule with the new interest rate and payment summary table for a transaction secured by real property or a dwelling, other than a transaction secured by a consumer's interest in a timeshare plan. Thus, § 226.18(g) is amended to exclude such transactions from its coverage.

18(s) Interest Rate and Payment Summary for Mortgage Transactions

This interim rule adopts a new § 226.18(s), which provides requirements for disclosure of the contract interest rate and the periodic payment for most transactions secured by real property or a dwelling. The information required by § 226.18(s)(2)–(4) must be in the form of a table, as provided in § 226.18(s)(1), substantially similar to Model Clause H–4(E), H–4(F), H–4(G), or H–4(H) in Appendix H. As noted above, some industry commenters on the 2009 Closed-End Proposal questioned the use of shading in the proposed model forms. The Board recognizes these commenters' concern that shading can undermine the forms' legibility when they are photocopied or faxed. By requiring that disclosures be "substantially similar" to the models, however, the Board does not intend that disclosures must include any shading that the models contain. Comment 18(s)–1 therefore clarifies that a disclosure that does not include the shading shown in a model clause but otherwise follows the model clause's headings and format is substantially similar to that model clause.

The rules for disclosing the interest rate and periodic payments for an amortizing loan are provided in

§§ 226.18(s)(2)(i) and 226.18(s)(3). Rules for disclosing the interest rate and periodic payments for a loan with negative amortization are in §§ 226.18(s)(2)(ii) and 226.18(s)(4). Special rules for disclosing balloon payments are found in § 226.18(s)(5). Additional explanations of introductory rates and negative amortization are required by §§ 226.18(s)(2)(iii) and 226.18(s)(6), respectively. Finally, § 226.18(s)(7) provides definitions for certain terms used in § 226.18(s).

Existing Requirements for Periodic Payments

TILA Section 128(a)(6) requires the creditor to disclose the number, amount, and due dates or period of payments scheduled to repay the total of payments, for closed-end credit. 15 U.S.C. 1638(a)(6). Currently, § 226.18(g) implements TILA Section 128(a)(6). Under § 226.18(g), creditors must show the number, amounts, and timing of payments scheduled to repay the obligation, except as provided in § 226.18(g)(2) for certain loans with varying payments.[3]

Comment 18(g)–1 provides that the payment schedule should include all components of the finance charge, not just interest. Thus, if mortgage insurance is required, the payment schedule must reflect the consumer's mortgage insurance payments until the date on which the creditor must automatically terminate coverage under applicable law. See comment 18(g)–5. Commentary to § 226.17(c) provides that, for an adjustable-rate loan, creditors should disclose the payments and other disclosures based only on the initial rate and should not assume that the rate will increase. The disclosures must reflect a discounted or premium initial interest rate, however, for as long as it is charged. The commentary permits, but does not require, creditors to include in the payments amounts that are not finance charges or part of the amount financed. Thus, creditors may, but need not, include insurance premiums excluded from the finance charge under § 226.4(d), and "real estate escrow amounts such as taxes added to the payment in mortgage transactions."

Effect of MDIA amendments. TILA Section 128(b)(2)(C), as added by the MDIA, requires additional disclosures for loans secured by a dwelling in which the interest rate or payments may vary. 15 U.S.C. 1638(b)(2)(C). Specifically, creditors must provide "examples of adjustments to the regular required payment on the extension of credit based on the change in the interest rates specified by the contract for such extension of credit. Among the examples required * * * is an example that reflects the maximum payment amount of the regular required payments on the extension of credit, based on the maximum interest rate allowed under the contract. * * *" 15 U.S.C. 1638(b)(2)(C).

TILA Section 128(b)(2)(C) provides that these examples must be in conspicuous type size and format and that the payment schedule be labeled "Payment Schedule: Payments Will Vary Based on Interest Rate Changes." TILA Section 128(b)(2)(C) requires the Board to conduct consumer testing to determine the appropriate format for providing the disclosures to consumers so that the disclosures can be easily understood, including the fact that the initial regular payments are for a specific time period that will end on a certain date, that payments will adjust afterwards potentially to a higher amount, and that there is no guarantee that the borrower will be able to refinance to a lower amount. 15 U.S.C. 1638(b)(2)(C). As discussed above, the Board conducted the required testing and, based on the results and other analysis, developed the mortgage disclosures contained in the 2009 Closed-End Proposal, including those aspects now being adopted in this interim rule.

The Interim Rule

The Board is adding new § 226.18(s) to implement TILA Section 128(a)(6) and Section 128(b)(2)(C) for most closed-end transactions secured by real property or a dwelling.[4] For all other closed-end credit transactions, § 226.18(g) continues to provide the rules for disclosing payments. Section 226.18(s) requires creditors to disclose the contract interest rate, regular periodic payment, and balloon payment if applicable. For adjustable-rate or step-rate amortizing loans, up to three interest rates and corresponding periodic payments are required, including the maximum possible interest rate and payment. If payments are scheduled to increase independent of an interest-rate adjustment, the increased payment must be disclosed. Payments for amortizing loans must separately itemize an estimate of the amount for taxes and insurance if the creditor will establish an escrow account. If a borrower may make one or more payments of interest only, all payment amounts disclosed must be itemized to show the amount that will be applied to interest and the amount that will be applied to principal. Special rate and payment disclosures are required for loans with negative amortization. Creditors must provide the information about interest rates and payments in the form of a table, and creditors are not permitted to include other, unrelated information in the table.

Scope of § 226.18(s). TILA Section 128(b)(2)(C) applies to all transactions secured by a dwelling, other than transactions secured by timeshare plans (discussed below). The Board proposed to expand the requirement in Section 128(b)(2)(C) to include loans secured by real property that do not include a dwelling and is now adopting that proposal. Thus, transactions secured by real property with no dwelling or other structure built thereon would be subject to the enhanced disclosures, assuming such transactions are consumer credit. Some creditors commented on the proposed expansion of the scope of the MDIA requirements, questioning its necessity. As discussed in the 2009 Closed-End Proposal, however, unimproved real property is likely to be a significant asset for most consumers, and consumers should receive the disclosures required in Section 128(b)(2)(C) before they become obligated on a loan secured by such an asset. The disclosures will alert consumers to the potential for interest rate and payment increases and help them to determine whether these risks are appropriate to their circumstances. The Board also believes that consistent disclosure requirements for all mortgage-secured, closed-end, consumer credit transactions, whether they include a dwelling or not, should ease compliance burdens for mortgage creditors.

The Board is adopting this adjustment to TILA Section 128(b)(2)(C) pursuant to its authority under TILA Section 105(a). 15 U.S.C. 1604(a). Section 105(a) authorizes the Board to make exceptions and adjustments to TILA for any class of transactions to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a). The class of transactions that would be affected is transactions secured by real property or a dwelling. As discussed, providing

[3] For a mortgage transaction with rates or fees that exceed certain thresholds, TILA Section 129 requires special disclosures regarding payments three business days before consummation of the transaction. *See* § 226.32(c)(3), (4). The Board is not revising those disclosures in this interim rule.

[4] TILA Section 128(b)(2)(C) also provides that the Board's testing should ensure that consumers can understand that there is no guarantee that they will be able to refinance. New § 226.18(t), discussed below, implements this aspect of Section 128(b)(2)(C).

examples of increased interest rates and payments will help consumers understand the risks involved in certain loans. The Board believes that this adjustment is proper to ensure that consumers receive meaningful disclosures that facilitate their informed use of credit.

Timeshare plans. TILA Section 128(b)(2)(G), as added by MDIA, excludes from the coverage of Section 128(b)(2)(C) an extension of credit secured by a timeshare plan. 15 U.S.C. 1638(b)(2)(G). Thus, the interim rule excludes these transactions from coverage of § 226.18(s).[5] This exclusion does not affect the determination of whether such transactions are subject to Regulation Z and § 226.18; if they are subject to that section, they must include the payment schedule under § 226.18(g).

Reverse mortgages. Section 226.18 currently applies to reverse mortgages. Reverse mortgages have unique features that make the disclosures in § 226.18, including the current payment schedule under § 226.18(g), difficult to apply and potentially confusing to consumers. The same is true of the new interest rate and payment summary tables required by this interim rule under § 226.18(s). Simultaneously with this interim rule, the Board is proposing improved comprehensive disclosure requirements tailored to closed- and open-end reverse mortgages. When those disclosures are adopted in final form, the Board anticipates that it also will exclude reverse mortgages from the coverage of the closed-end mortgage disclosure requirements. In the meantime, the Board is excluding reverse mortgages from the definition of "negative amortization mortgage" under § 226.18(s)(7) because the special interest rate and payment summary requirements for negative amortization mortgages, discussed below, would be especially unworkable for reverse mortgages and also especially likely to cause consumer confusion. Virtually all reverse mortgages being made in the market currently are, to the Board's knowledge, fixed-rate loans. Consequently, under the requirements discussed below, reverse mortgages would be disclosed under the relatively straightforward fixed-rate summary table requirements of §§ 226.18(s)(2)(i) and 226.18(s)(3).

[5] Credit secured by a timeshare plan is also excluded from MDIA's other requirements. Accordingly, the MDIA Final Rule excluded from the new timing, corrected disclosure, and related requirements a transaction "that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D)." *See* § 226.19(a)(5).

Fixed-rate, fixed-payment loans. TILA Section 128(b)(2)(C) applies by its terms only to mortgages where the rate, payment, or both may change after consummation. Accordingly, the Board could apply the new interest rate and payment summary requirements to only such mortgages and leave fixed-rate, fixed-payment mortgages subject to § 226.18(g). The Board believes, however, that applying § 226.18(s) to all mortgages will simplify compliance for creditors and make comparing different loan products more straightforward for consumers. Accordingly, the interest rate and payment summary table is required for all transactions secured by real property or a dwelling, including fixed-rate, fixed-payment mortgages. The Board is adopting this requirement pursuant to its authority under TILA Section 105(a) to effectuate the purposes of TILA. 15 U.S.C. 1604(a).

Payment schedule label. The Board proposed in the 2009 Closed-End Proposal to revise the label for the interest rate and payment information from the text set out in the statute. The Board proposed to replace the statutory language, "Payment Schedule: Payments Will Vary Based on Interest Rate Changes," with "Interest Rate and Payment Summary" based on plain language principles, to make the disclosure more readily understandable. The Board is now adopting that proposal. The Board is making this adjustment pursuant to the same TILA Section 105(a) authority, and for the same class of transactions, as discussed above with respect to transactions subject to § 226.18(s).

Disclosure of the interest rate. Currently, TILA does not require disclosure of the contract interest rate for closed-end credit. In the consumer testing conducted for the Board, when consumers were asked what factors they considered when looking for a mortgage, the most common answers consumers provided were that they wanted to obtain the lowest interest rate possible and that they wanted the loan with the lowest possible monthly payment. Nevertheless, as they described their thought process, most consumers were primarily focused on the initial rate and payment, rather than how those terms might vary over time.

In addition, testing indicated that the current TILA payment schedule, which does not show the relationship between the interest rate and payments, is ineffective at communicating to consumers what could happen to their payments over time with an adjustable-rate mortgage. Most participants said they liked the current presentation of the payments because it was specific and detailed. When shown a payment schedule for an adjustable-rate mortgage with an introductory rate, however, many incorrectly assumed that payments shown were in fact their future payments, rather than payments based on the fully-indexed rate at consummation.

Under the Board's interim rule, the interest rate and payment are shown together in a table. The Board believes that highlighting the relationship between the interest rate and payment will enhance consumers' understanding of loan terms. If the interest rate is adjustable, the table indicates changes in the interest rate over time. In addition, payment changes that are not based on adjustments to the interest rate are indicated in the table. Highlighting potential changes to the interest rate and payment based on maximum interest rate increases, rather than showing a set payment schedule based on the assumption that the index used to calculate an adjustable interest rate will not change, will clarify to consumers not only *that* their interest rate and payments may change, but also *how* the interest rate and payment may change over time. Consumers will be better able to determine if an adjustable-rate loan will be affordable and appropriate for their individual circumstances.

Definitions for § 226.18(s). Section 226.18(s) uses several terms that are defined in § 226.18(s)(7). Under § 226.18(s)(7), the term "adjustable-rate mortgage" means a loan in which the annual percentage rate may increase after consummation. The term "step-rate mortgage" means a loan in which the interest rate will change after consummation, and the rates and periods in which they will apply are known. The term "fixed-rate mortgage" means a loan that is not adjustable-rate or step-rate. The term "interest-only" means that one or more periodic payments may be applied solely to interest and not to loan principal; an "interest-only loan" is a loan that permits interest-only payments. An "amortizing loan" is defined as a loan in which the regular periodic payments cannot cause the principal balance to increase; the term "negative amortization" means the regular periodic payments may cause the principal balance to increase; the term "negative amortization loan" means a loan with a negative amortization feature but explicitly excludes a reverse mortgage, as discussed above. Finally, the term "fully-indexed rate" means the interest rate calculated using the index value and margin.

18(s)(1)

Section 226.18(s)(1) requires the interest rate and payment information to be disclosed in the form of a table. This will ensure that payment examples required by the MDIA are in conspicuous format as required by TILA Section 128(b)(2)(C). The MDIA also requires conspicuous type size for the examples. Under § 226.18(s)(1), the table must be in a minimum 10-point font to ensure that it is clear and conspicuous.

The interim rule prescribes the number of interest rates and payments that may be shown in the table. The number of columns and rows for the table required by § 226.18(s) will vary depending on whether the loan is an amortizing loan and whether it has an adjustable rate. In all cases, § 226.18(s)(1) provides that the tables must have no more than five columns across, to avoid information overload for consumers. Creditors may not include information in the table that is not required under 226.18(s), to avoid information overload. Model clauses are provided in Appendix H.

18(s)(2) Interest Rates

18(s)(2)(i) Amortizing Loans

Section 226.18(s)(2)(i) requires disclosure of interest rates for amortizing loans. For a fixed-rate mortgage with no scheduled payment increases or balloon payments, the creditor discloses only one interest rate. Fixed-rate loans with payment increases require the creditor to disclose the interest rate along with each payment increase, even if the interest rate does not change. For adjustable-rate mortgages and step-rate mortgages, more than one interest rate must be shown, as discussed below.

Interest Rates for Fixed-Rate Mortgages

For fixed-rate mortgages, § 226.18(s)(2)(i)(A) requires creditors to disclose the interest rate applicable at consummation. If the transaction does not provide for any payment increases, only one interest rate is disclosed. Some fixed rate mortgages, however, have scheduled payment increases. In those cases the creditor must show the interest rate associated with such payments, even though the rate has not changed, as discussed under § 226.18(s)(2)(i)(C) below.

Interest Rates for Adjustable-Rate Mortgages and Step-Rate Mortgages

As discussed above, TILA Section 128(b)(2)(C) requires creditors to disclose examples of payment increases, including the maximum possible payment, for adjustable-rate mortgages and other mortgages where payments may vary. Under § 226.18(s)(2)(i), creditors must disclose more than one interest rate for adjustable-rate mortgages and step-rate mortgages because the payments can vary.

Interest rates at consummation. Under § 226.18(s)(2)(i)(B)(1), the creditor must provide the interest rate at consummation and the period of time until the first adjustment, labeled as "introductory rate and monthly payment." Additional explanation of discounted introductory rates is required by § 226.18(s)(2)(iii), discussed below.

Maximum during first five years. The Board proposed in the 2009 Closed-End Proposal to require disclosure of the maximum rate and payment at first adjustment, as one of the examples required by TILA Section 128(b)(2)(C). The proposal would have required the creditor to provide the maximum interest rate applicable at the first interest rate adjustment and the calendar month and year in which the first scheduled adjustment occurs.

The Board is modifying this aspect of the proposed rule. Instead of the maximum rate at the first scheduled adjustment, § 226.18(s)(2)(i)(B)(2) requires disclosure of the maximum possible rate at any time during the first five years after consummation, even if that is not the first adjustment, and the earliest date that rate may apply. The Board believes that requiring the example to reflect the first adjustment poses a risk that consumers would not be adequately warned of significant interest rate changes on a transaction where the first adjustment will be fairly modest under the transaction's terms. The limited first rate increase could be followed quickly by a much greater increase, which would not be disclosed under the rule as proposed. The Board solicits comment on whether five years is the appropriate period to address this concern. Consistent with the 2009 Closed-End Proposal, the creditor must take into account any limitations on interest rate increases when determining the interest-rate to be disclosed under § 226.18(s)(2)(i)(B)(2). If the interest rate may reach the maximum possible during the loan's term within the first five years, the creditor should disclose the rate as the maximum possible interest rate, discussed below.

Maximum possible interest rate. Section 226.18(s)(2)(i)(B)(3) requires creditors to disclose the maximum interest rate that could apply at any time, and the earliest date on which that rate could apply, as required by TILA Section 128(b)(2)(C). The Board is requiring this disclosure for step-rate mortgages as well, because the rate and payment may increase in such loans. As noted above, consumer advocates strongly supported this requirement in their comments. Consumer testing conducted for the Board also suggests that consumers find this information about the maximum rate and payment particularly important in evaluating a loan offer for an adjustable-rate mortgage. Participants indicated that this information is most useful to them in determining whether such a loan was affordable. If an amortizing adjustable-rate mortgage has intermediate limitations on interest rate increases, then the table required by proposed § 226.18(s) will have at least three columns; if the transaction has no intermediate limitations on interest rates, then the table will have two columns, one showing the rate at consummation and the other showing the maximum possible under the loan's terms.

Interest rate applicable at scheduled payment increase. Some mortgages provide for a payment increase that is not attributable to an interest rate adjustment or increase. For example, a loan may permit the borrower to make payments that cover only accrued interest for some specified period, such as the first five years following consummation; at the end of the interest-only period, the borrower must begin making larger payments to cover both interest accrued and principal. Section 226.18(s)(2)(i)(C) provides that, where such a payment increase will not coincide with an interest rate adjustment, the creditor must include a column that discloses the interest rate that would apply at the time the adjustment is scheduled to occur, and the date on which the increase would occur. Thus, for a fixed-rate mortgage, the creditor shows the same interest rate twice (and the corresponding payments as discussed below). The Board believes this will help the consumer understand that the increase in payment is due to the requirement to begin repaying loan principal and not to an interest-rate adjustment.

The same is true for adjustable-rate mortgages and step-rate mortgages. For example, some adjustable-rate mortgages permit the borrower to make interest-only payments for a specified period, such as the first five years following consummation. A scheduled payment increase may or may not coincide with a scheduled interest rate adjustment. Under § 226.18(s)(2)(i)(C), if a scheduled payment increase does not coincide with an interest rate adjustment (or rate increase for a step-rate mortgage), creditors must include a column that discloses the interest rate that will apply at the time of the increase, the date the increase is scheduled to occur, and an appropriate description such as "first increase" or "first adjustment," as appropriate. Comment 18(s)(2)(i)(C)–1 provides clarifying examples.

18(s)(2)(ii) Negative Amortization Loans

For negative amortization loans, for which any scheduled payment may cause the principal balance to increase, § 226.18(s)(2)(ii) requires disclosure of the interest rate applicable at consummation. Some ARM loans do not provide any limitations on interest rate increases ("interest rate caps"); the only cap is the maximum possible interest rate required by § 226.30(a). For these payment option loans, the creditor must disclose the interest rate in effect at consummation and assume that the interest rate reaches the maximum at the next adjustment—often the second month after consummation. The creditor must disclose that rate for the first and second scheduled payment increases, explained under the discussion of § 226.18(s)(4) below. And the creditor must disclose that rate a third time, in the last column, when the loan has recast, i.e., converted to fully amortizing payments over the remainder of the loan's term. This approach to interest rates for negative amortization loans is consistent with the MDIA, which requires disclosure of the payment at the maximum possible rate, and other examples of payment increases. Additional rules for disclosing the interest rate on a loan with negative amortization are found in § 226.18(s)(6), discussed below.

18(s)(2)(iii) Introductory Rate Disclosure for Amortizing Adjustable-Rate Mortgages

Many adjustable-rate mortgages have an introductory or "teaser" rate, set below the sum of the index and margin used for later adjustments. Section 226.18(s)(2)(iii) requires a special disclosure of any introductory rate. In consumer testing conducted for the Board, many participants did not understand the ramifications of an introductory interest rate. Participants understood that if market interest rates increased, the interest rate and payment on their loan would increase. In contrast, participants did not understand that, if they had an introductory rate, their interest rate and payment would increase when the introductory rate expired, even if market interest rates did not increase.

Several different disclosures designed to show the impact of an introductory rate were tested in tabular form, with mixed results. Therefore, the Board is requiring an explanation of the introductory rate below the table itself. Section 226.18(s)(2)(iii) requires disclosure of the introductory rate, how long it will last, and that the interest rate will increase at the first scheduled adjustment even if market rates do not increase. Creditors also must disclose the fully indexed rate that otherwise would apply at consummation. This disclosure must be placed in a box beneath the table, in a format substantially similar to Model Clause H–4(I).

Creditors commenting on the 2009 Closed-End Proposal expressed concern over the requirement to disclose the fully-indexed rate at consummation because the value of the index at consummation may be unknown when disclosures are required to be delivered within three business days after receipt of an application under § 226.19(a)(1). Comment 18(s)(2)(iii)(C)–1 would clarify that, for early disclosures, the fully-indexed rate disclosed under § 226.18(s)(2)(iii)(C) may be based on the index in effect at the time the disclosure is provided. "At consummation," as used in § 226.18(s)(2)(iii)(C), refers to disclosures delivered at consummation, or three business days before consummation pursuant to § 226.19(a)(2)(ii). The comment also adopts guidance for cases where the contract provides for a delay in the implementation of changes in an index value. In such cases, the disclosure may reflect an index value in effect anytime during the contractual delay period prior to the time of the disclosure. For example, if the contract specifies that rate changes are based on the index value in effect 45 days before the change date, creditors may use any index value in effect during the 45 days before consummation (or any earlier date of disclosure) in calculating the fully-indexed rate to be disclosed. This guidance is similar to existing comment 17(c)(1)–10.

18(s)(3) Payments for Amortizing Loans

18(s)(3)(i) Principal and Interest Payments

Section 226.18(s)(3)(i) requires disclosure of the principal and interest payment that corresponds to each interest rate disclosed under § 226.18(s)(2)(i). Under § 226.18(s)(3)(i), if all regular periodic payments include principal and interest, each disclosed payment amount must be listed in a single row in the table with a description such as "principal and interest." Separate rules apply to amortizing loans with interest-only payments under § 226.18(s)(3)(ii), discussed below.

Regular periodic payments. Under § 226.18(s)(3)(i)(A), for transactions where the regular periodic payment fully amortizes the loan, the payment amount including both principal and interest must be disclosed. Section 226.18(s)(3)(i)(B) requires disclosure of the payment amount at any scheduled payment increase that does not coincide with an interest rate adjustment, and the date on which the increase is scheduled to occur. For example, a fixed-rate loan might have terms under which part of the scheduled payment is applied to principal for an initial period, thus it is not an interest-only loan disclosed under § 226.18(s)(3)(ii). The amount of principal covered by such payments, however, may be insufficient to amortize the loan fully over its life. In such cases, a scheduled increase in the payment amount from such a partially amortizing payment to a fully amortizing payment would be required to be disclosed.

Escrows; mortgage insurance premiums. Section 226.18(s)(3)(i)(C) provides that, if an escrow account will be established, the creditor must disclose the estimated payment amount for taxes and insurance, including any mortgage insurance. For transactions secured by real property or a dwelling, creditors no longer have the flexibility provided in existing § 226.18(g) to exclude escrow amounts. Consumer testing conducted for the Board shows that many consumers compare loans based on the monthly payment amount. The Board believes that, for consumers to understand the monthly amount they actually will be required to pay for a particular loan, information about payments for taxes and insurance is necessary. Escrow information is included in the table to make it easier for consumers to identify whether there is an escrow account and how much of their payment applies to the escrow.

As noted above, both consumer advocates and some industry commenters argued that taxes and insurance estimates should be included even when no escrow account is established. The Board believes there may be valid reasons for such an approach. For purposes of this interim rule, however, the Board is adopting the requirement as proposed. The Board is concerned that disclosures of taxes and insurance in all cases may leave consumers confused as to whether an escrow account is included with the loan or not, in the absence of a clear and effective notice indicating which is the case. After additional testing can be conducted to determine whether such a notice is feasible and helpful to consumers, the Board will consider such an approach when it adopts the 2009 Closed-End Proposal as a final rule.

Comment 18(s)(3)(i)(C)–1 clarifies the types of taxes and insurance that are required to be included in the estimate. The comment also clarifies that the estimated escrow amounts disclosed under § 226.18(s)(3)(i)(C), other than mortgage insurance premiums, do not affect any other disclosures, including the finance charge and annual percentage rate.

Comment 18(s)(3)(i)(C)–2 provides guidance on how to determine the length of time for which mortgage insurance payments must be included in the estimate. Under the comment, the payment amount should reflect the consumer's mortgage insurance payments until the date on which the creditor must automatically terminate coverage under applicable law, even though the consumer may have a right to request that the insurance be canceled earlier. This guidance mirrors existing comment 18(g)–5. Comment 18(s)(3)(i)(C)–2 also states that periodic mortgage insurance payments should be included in the escrow line of the summary table even if they are not escrowed and even if there is no escrow account established for the transaction.

Credit insurance. The Board solicited comment on whether premiums or other amounts for credit life insurance, debt suspension and debt cancellation agreements, and other similar products ("credit protection products") should be included or excluded from the disclosure of escrows for taxes and insurance. The Board expressed concerns that inclusion of such amounts may cause some consumers to believe these products are required. Most commenters that addressed this question agreed with the Board's concern and favored excluding such amounts from the escrow amount disclosed. The Board is adopting the escrow disclosure requirement as proposed and is adding language to comment 18(s)(3)(i)(C)–1 to clarify that premiums or payments for credit protection products should not be included in the disclosed escrow amounts.

Total periodic payments. Section 226.18(s)(3)(i)(D) requires disclosure of the total estimated monthly payment. The total estimated monthly payment is the sum of the principal and interest payments required under § 226.18(s)(3)(i)(A) or (B), as applicable, and the estimated taxes and insurance payments required to be disclosed in § 226.18(s)(3)(i)(C).

18(s)(3)(ii) Interest-Only Payments

Like § 226.18(s)(3)(i), § 226.18(s)(3)(ii) requires the disclosure of regular periodic payments corresponding to the amortizing loan interest rates disclosed under § 226.18(s)(2)(i). In addition, under § 226.18(s)(3)(ii), special itemization of the payment is required if the loan permits the consumer to make any interest-only payments. Comment 18(s)(3)(ii)–1 clarifies, however, that these rules apply only if the loan is not also a negative amortization loan; if the loan is a negative amortization loan, even if it also has an interest-only feature, payments are disclosed under the rules in § 226.18(s)(4), discussed below.

Principal and interest payment itemization. Under § 226.18(s)(3)(ii), if any regular periodic payment amounts will include interest but not principal, all payments for the loan must be itemized into principal and interest. For a payment that includes no principal, § 226.18(s)(3)(ii)(A) requires the creditor to indicate that none of the payment amount will be applied to principal. The creditor must label the dollar amount to be applied to interest "interest payment." The Board requires this itemization and labeling to highlight for consumers the impact of making interest-only payments. Without this emphasis, many participants in the Board's consumer testing did not clearly understand that an "interest-only" loan was different from a loan in which all payments are applied to principal and interest. Thus, even for later payments that will be applied to both principal and interest, § 226.18(s)(3)(ii)(B) requires the creditor to itemize the payment between the two.

Escrows and total periodic payments. Section 226.18(s)(3)(ii)(C) requires disclosure of an estimate of the amount of taxes and insurance, including mortgage insurance. Section 226.18(s)(3)(ii)(D) requires disclosure of the estimated total payment including principal, interest, and taxes and insurance. These requirements parallel the escrow and total payment disclosures under § 226.18(s)(3)(i)(C) and (D). Accordingly, comment 18(s)(3)(ii)(C)–1 refers to the commentary under § 226.18(s)(3)(i)(C), discussed above, for guidance on escrows.

18(s)(4) Payments for Negative Amortization Loans

Under § 226.18(s)(4), for each interest rate disclosed under § 226.18(s)(2)(ii) for a loan with negative amortization, the creditor must disclose payments in two separate rows. One row of the table shows the fully amortizing payment for each interest rate; for purposes of calculating these payments the creditor would assume the interest rate reaches the maximum at the earliest possible date and that the consumer makes only fully amortizing payments. The other row of the table shows the minimum required payment for each rate, until the recast point. At the recast point, the minimum payment row shows the fully amortizing payment. For purposes of the minimum payment row, creditors must assume the interest rate reaches the maximum at the earliest possible date and that the consumer makes only the minimum required payment for as long as permitted under the terms of the legal obligation.

The interest rate and payment summary would display only two payment options, even if the terms of the legal obligation provide for others, such as an option to make interest-only payments. The table would show only the option to make minimum payments that would result in negative amortization, and the option to make fully amortizing payments. The Board believes that displaying all of the options in the table could cause confusion and information overload for consumers. Creditors would be free to provide information on options not displayed in the table, outside the segregated information required under this subsection.

Consumer advocates commented that the Board's proposed sample disclosure for payment option adjustable-rate mortgages ("payment option ARMs"), proposed sample H–19(I), would not show the maximum possible payment for a typical payment option ARM because the sample assumed the transaction's lifetime maximum interest rate of 10.5% would be reached at the second payment, which caused the loan to recast to fully amortizing payments at the earliest possible time. The commenters noted that a payment option ARM reaches the maximum possible payment when it applies an intervening rate for a period, so that the onset of fully amortizing payments is delayed as long as possible thus maximizing the principal balance to which the lifetime maximum rate is applied after the loan recasts. The proposed sample was intended to illustrate the maximum payment possible under certain assumed transaction terms, which did not include any rate adjustment caps other than the lifetime cap. Thus, while it did not show the maximum possible payment under any payment option

ARM, it showed the maximum payment under the type of product it was intended to illustrate. This interim rule is publishing only model clauses, not samples, thus it entails no assumptions regarding sample transaction terms. In all cases, however, these rules require that creditors reflect all applicable terms, including rate adjustment caps, maximum negative amortization amounts and periods, and maximum interest rates.

Minimum payment amounts. The rule requires a disclosure of the amount of the minimum required payment applicable for each interest rate required to be disclosed under § 226.18(s)(2)(ii) and the date on which that payment becomes applicable. Section 226.18(s)(4)(i)(A) requires disclosure of the minimum required payment at consummation.

Payment increases. As noted above, some payment option loans do not have interest rate adjustment caps, and thus the interest rate may reach its maximum at the first interest rate adjustment. Such loans may have limits, however, on the amount that the minimum payment may increase following an interest rate adjustment. For example, a minimum payment increase may be limited by a certain percentage, such as 7.5% greater than the previous minimum payment. (Such limits are generally subject to conditions and will apply only until a specific time, such as at the fifth year of the loan, or until the loan balance reaches a certain maximum.) Under § 226.18(s)(4)(i)(B), if adjustments in the minimum payment amount are limited such that the payment will not fully amortize the loan even after the interest rate has reached the maximum, a disclosure of the minimum payment amount at the first and second payment adjustments is required. That is, in cases where the *first* interest rate adjustment will be the *only* interest rate adjustment, but payment adjustments will continue to occur before the minimum payment recasts to a fully amortizing payment, a disclosure of up to two additional minimum payment adjustments is required.

Explanation of negative amortization. Under § 226.18(s)(4)(i)(C), the creditor must provide a statement that the minimum payment will cover only some of the accrued interest and none of the principal and will cause the principal balance to increase. Participants in the Board's consumer testing were unfamiliar with the concept of negative amortization and struggled to understand why a loan's balance would increase when payments were made. Thus, the Board is adopting this required statement to ensure that consumers are informed about the consequences of making such minimum payments.

Payment after recast. Section 226.18(s)(4)(ii) requires disclosure of the fully amortizing payment that will be required when the loan recasts, *i.e.,* when minimum payments no longer are permitted and fully amortizing payments are required under the terms of the legal obligation. This payment amount must reflect the maximum possible interest rate that will be applicable at that time, based on the terms of the legal obligation, as disclosed under § 226.18(s)(2)(ii)(B).

Fully amortizing payments. Section 226.18(s)(4)(iii) requires disclosure in a separate row of the table of the fully amortizing payment, assuming that the consumer makes only fully amortizing payments beginning at consummation. The fully amortizing payment row must be completed for each interest rate required to be disclosed under § 226.18(s)(2)(ii). The Board believes that contrasting the fully amortizing payment with the minimum required payment will help consumers to understand the implications of making the fully amortizing payment and the minimum payment. In consumer testing, participants understood from the table that if they made the fully amortizing payment each month they would pay their loan off, and that if they instead made the minimum payment they would not pay the loan off and in fact would increase the amount that they owe.

18(s)(5) Balloon Payments

Under § 226.18(s)(5)(i), if a loan's terms provide for a balloon payment, the payment must be disclosed in the last row of the table rather than in a column, unless it coincides with an interest rate adjustment or other payment increase such as the expiration of an interest-only option. Section 226.18(s)(5)(i) provides that a payment is a balloon payment if it is more than twice the amount of other payments. Under § 226.18(s)(5)(ii), if a balloon coincides with an interest rate adjustment or other payment increase, the balloon payment is disclosed in the table as that payment increase.

18(s)(6) Special Disclosures for Loans With Negative Amortization

Statement of balance increase and other information. Section 226.18(s)(6) requires a statement of the amount of the increase in the loan's principal balance if the consumer makes only minimum payments and the earliest month and year in which the minimum payment will recast to a fully amortizing payment under the terms of the legal obligation, assuming that the interest rate reaches its maximum at the earliest possible time. As noted, participants in testing expressed confusion about negative amortization; the Board believes this disclosure and the other required disclosures in the table will help consumers understand the risks of making such minimum payments. In addition, to help consumers navigate the information in the table, § 226.18(s)(6) requires a statement directly above the interest rate and payment summary table explaining that the loan offers payment options. The explanation preceding the table also must state the maximum possible interest rate and the smallest number of months or years in which the interest rate could reach its maximum.

The creditor also must disclose whether an escrow account will be established and, if so, an estimate of the amount for taxes and insurance included in each periodic payment. Comment 18(s)(6)-1 refers to the commentary under § 226.18(s)(3)(i)(C) for guidance on escrows. The comment notes that, under that guidance, mortgage insurance payments decline over a loan's term, and the payment amounts shown in the table should reflect the mortgage insurance payment that will be applicable at the time each disclosed periodic payment will be in effect. Accordingly, the disclosed mortgage insurance payment will be zero if it corresponds to a periodic payment that will occur after the creditor will be legally required to terminate mortgage insurance. On the other hand, because only one escrow amount is disclosed under § 226.18(s)(6) for negative amortization loans and escrows are not itemized in the payment amounts, the single escrow amount disclosed should reflect the mortgage insurance amount that will be collected as of the outset of the loan's term.

18(s)(7) Definitions

As noted above, § 226.18(s)(7) provides definitions for several terms used in § 226.18(s). Those definitions are discussed at the beginning of this section-by-section analysis to facilitate the subsequent discussion of this interim rule's requirements.

18(t) "No-Guarantee-to-Refinance" Statement

The MDIA also amended Section 128(b) of TILA to require creditors to disclose for variable rate transactions, in conspicuous type size and format, that there is no guarantee that the consumer will be able to refinance the transaction to lower the interest rate or monthly payments ("MDIA refinancing warning").[6] 15 U.S.C. 1638(b)(2)(C)(ii). To implement the disclosure required by the MDIA, the Board is adding a new § 226.18(t). Section 226.18(t)(1) requires creditors to disclose a statement that there is no guarantee that the consumer will be able to refinance the loan to obtain a lower interest rate and payment. The Board believes that including such a statement on the TILA disclosure form will alert consumers to consider the impact of future rate adjustments and increased monthly payments.

Although the MDIA requires this refinancing warning only for variable-rate transactions secured by a dwelling, the Board proposed in the 2009 Closed-End Proposal to expand the scope of the requirement to include fixed-rate transactions secured by a dwelling, as well as transactions secured by real property without a dwelling. The Board is now adopting this approach. The Board is concerned that some consumers may accept loan terms that could present possible payment shock concerns similar to variable-rate transactions, such as a three-year, fixed-rate mortgage with a balloon payment. Based on consumer testing, the Board believes all consumers, regardless of transaction-type, would benefit from a statement that encourages consideration of future possible market rate increases. Consistent with MDIA's provisions, however, § 226.18(t) does not apply to transactions secured by timeshare plans.

Section 226.18(t)(2) provides format requirements for the statement required by § 226.18(t)(1). The statement must be made in a form substantially similar to Model Clause H–4(K) in Appendix H. In the 2009 Closed-End Proposal, the Board proposed to require that the statement be made together with the security interest disclosure. The Board also proposed to modify the security interest disclosure to provide a more plain-language approach to the significant potential consequences of a creditor taking a security interest in a consumer's home. See 74 FR 43232, 43310, Aug. 26, 2009. The Board is not adopting the proposed changes to the security interest disclosure at this time because that is not necessary to implement the MDIA amendments that take effect on January 30, 2011. Accordingly, the Board also is not adopting the requirement to link the security interest disclosure to the new statement that there is no guarantee a consumer will be able to refinance.

Appendixes G and H Open-End and Closed-End Model Forms and Clauses

Comment App. G and H–1 discusses permissible changes to the model forms and clauses. It states that creditors may make certain changes to the format or content of the model forms without losing TILA's protection from liability for their use. It also indicates, however, that formatting changes may not be made to certain model forms and samples. This interim rule amends the comment to add new model clauses H–4(E), H–4(F), H–4(G), and H–4(H) to the list of models whose formatting may not be altered.

Appendix H Closed-End Model Forms and Clauses

As noted above, the Board is adopting several model clauses to illustrate the new requirements under this interim rule. Model Clause H–4(E) illustrates the interest rate and payment summary table required under § 226.18(s) for a fixed-rate mortgage transaction. Model Clause H–4(F) illustrates the table for an adjustable-rate or a step-rate mortgage transaction. Model Clause H–4(G) illustrates the table for a mortgage transaction with negative amortization. Model Clause H–4(H) illustrates the table for a fixed-rate loan with interest-only terms. Model Clause H–4(I) illustrates the introductory rate disclosure required by § 226.18(s)(2)(iii) if an adjustable-rate mortgage has an introductory rate. Model Clause H–4(J) illustrates the balloon payment disclosure required by § 226.18(s)(5) for a mortgage with a balloon payment term. Finally, Model Clause H–4(K) illustrates the no-guarantee-to-refinance statement required by § 226.18(t).

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the interim rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this interim rule is found in 12 CFR part 226. The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0199.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq.*). Since the Board does not collect any information, no issue of confidentiality arises. The respondents/recordkeepers are creditors and other entities subject to Regulation Z.

TILA and Regulation Z are intended to ensure effective disclosure of the costs and terms of credit to consumers. For open-end credit, creditors are required, among other things, to disclose information about the initial costs and terms and to provide periodic statements of account activity, notice of changes in terms, and statements of rights concerning billing error procedures. Regulation Z requires specific types of disclosures for credit and charge card accounts and home-equity plans. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required for certain products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising. Creditors are required to retain evidence of compliance for two years, see § 226.25, but Regulation Z identifies only a few specific types of records that must be retained.[7]

Under the PRA, the Board accounts for the paperwork burden associated with Regulation Z for the state member banks and other creditors supervised by the Federal Reserve that engage in consumer credit activities covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the Federal Reserve-regulated institutions as: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other federal agencies account for the paperwork burden imposed on the entities for which they have administrative enforcement authority. The current total annual burden to comply with the provisions of Regulation Z is estimated to be 1,497,362 hours for the 1,138 Federal Reserve-regulated institutions that are deemed to be respondents for the purpose of the PRA. A detailed discussion of revised burden is presented in the following two paragraphs. To ease the burden and cost of complying with Regulation Z (particularly for small entities), the

[6] Specifically, the MDIA requires that the Board use consumer testing to develop disclosures for variable-rate transactions, including the fact that "there is no guarantee that the borrower will be able to refinance to a lower amount." Public Law 109–8, 119 Stat. 23, § 2502(a)(6).

[7] *See* comments 25(a)–3 and –4.

Board provides model forms, which are appended to the regulation.

As discussed in the preamble, the Board is adopting changes to format and content requirements for disclosures for closed-end mortgages that are required within three days after application and before consummation. The interim rule will impose a one-time increase in the total annual burden under Regulation Z for all respondents regulated by the Federal Reserve by 136,560 hours, from 1,497,362 to 1,633,922 hours. In addition, the Board estimates that the proposed revisions to the rules will increase the total annual burden on a continuing basis from 1,497,362 to 2,043,602 hours.

The Board estimates that 1,138 respondents regulated by the Federal Reserve would take, on average, 120 hours (three business weeks) to update their systems and internal procedure manuals and to provide training for relevant staff to comply with the new disclosure requirements in § 226.18(s) and (t). This one-time revision will increase the burden by 136,560 hours. On a continuing basis, the Board estimates that 1,138 respondents regulated by the Federal Reserve will take, on average, 40 hours a month to comply with the new disclosure requirements and that the new requirements will increase the ongoing burden from 304,756 hours to 546,240 hours. To ease the burden and cost of complying with the new requirements under Regulation Z the Board is adding several model clauses to Appendix H.

The total estimated burden increase represents averages for all respondents regulated by the Federal Reserve. The Board expects that the amount of time required to implement the changes for a given institution may vary based on the size and complexity of the respondent. Further, the estimated burden increase does not include the burden of complying with other proposed and final rules the Board is issuing simultaneously with this interim rule.

The other federal financial agencies, Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA), are responsible for estimating and reporting to OMB the total paperwork burden for the domestically chartered commercial banks, thrifts, and federal credit unions and U.S. branches and agencies of foreign banks for which they have primary administrative enforcement jurisdiction under TILA Section 108(a), 15. U.S.C. 1607(a). These agencies are permitted, but are not required, to use the Board's burden estimation methodology. Using the Board's method, the total current estimated annual burden for the approximately 16,200 domestically chartered commercial banks, thrifts, and federal credit unions and U.S. branches and agencies of foreign banks supervised by the Federal Reserve, OCC, OTS, FDIC, and NCUA under TILA will be approximately 19,610,245 hours. The interim rule will impose a one-time increase in the estimated annual burden for such institutions by 1,944,000 hours to 21,554,245 hours. On a continuing basis, the interim rule will impose an increase in the estimated annual burden by 7,776,000 to 27,386,245 hours. The above estimates represent an average across all respondents; the Board expects variations between institutions based on their size, complexity, and practices.

Comments are invited on: (1) Whether the new collection of information is necessary for the proper performance of the Board's functions; including whether the information has practical utility; (2) the accuracy of the Board's estimate of the burden of the information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Michelle Shore, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 95–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

VII. Regulatory Flexibility Analysis

In accordance with Section 4 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 604, the Board is publishing a final regulatory flexibility analysis for the amendments to Regulation Z in this interim rule. The RFA generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities.[8] Under Section 5(b) of the RFA, however, the regulatory flexibility analysis otherwise required under Section 4 of the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and states the factual basis for such certification. 5 U.S.C. 605(b). The Board believes that this interim rule will not have a significant economic impact on a substantial number of small entities. The amendments to Regulation Z's disclosure requirements implement revisions to TILA made by MDIA. Creditors must comply with MDIA's requirements when they become effective on January 30, 2011, whether or not the Board amends Regulation Z to conform the regulation to the statute. The Board's final rule is intended to facilitate compliance by eliminating inconsistencies between Regulation Z's existing requirements and the statutory requirements imposed by the MDIA, which are effective January 30, 2011.

A. Statement of the Need for, and Objectives of, the Interim Rule

Congress enacted the TILA based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. One of the stated purposes of TILA is to provide meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and avoid the uninformed use of credit. TILA also contains procedural and substantive protections for consumers. TILA directs the Board to prescribe regulations to carry out the purposes of the statute. The Board's Regulation Z implements TILA.

Congress enacted the MDIA in 2008 as an amendment to TILA. The MDIA amended TILA's disclosure requirements for closed-end mortgage transactions that are secured by a consumer's dwelling. In May 2009, the Board revised Regulation Z to implement those requirements. The MDIA also amended TILA to require disclosure of examples for variable-rate mortgage transactions of payment changes, including the maximum payment increase possible, and to require disclosure to ensure that consumers are aware that there is no guarantee they will be able to refinance to lower their payments in the future. As discussed in part V of the **SUPPLEMENTARY INFORMATION**, this interim rule implements those MDIA requirements by requiring disclosure of

[8] Under standards set by the U.S. Small Business Administration (SBA), an entity is considered "small" if it has $175 million or less in assets, for banks and other depository institutions, or $7 million or less in revenues, for non-bank mortgage lenders, mortgage brokers, and loan servicers. U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, *available at http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

the interest rate and payment summary and the no guarantee to refinance statement.

B. Summary of Issues Raised by Comments in Response to the Initial Regulatory Flexibility Analysis

The initial regulatory flexibility analysis published in the 2009 Closed-End Proposal (IRFA) related to the disclosure requirements being implemented by this interim rule, as well as a significant number of additional proposed requirements for mortgage transactions. Those additional requirements include the rest of the proposed changes to the TILA disclosure's content, timing, and format; proposed new requirements and changes to the format and content of disclosures given at application; proposed changes to the timing, content, and types of notices provided after consummation; and proposed new protections related to limits on loan originator compensation. Consequently, most comments to the 2009 Closed-End Proposal relating specifically to the IRFA addressed the overall proposal. Comments relating to specific burdens focused mainly on aspects of the proposal other than the interest rate and payment summary and the no-guarantee-to-refinance statement.

A few commenters opposed certain aspects of the interest rate and payment summary, such as its tabular format requirement, on the grounds that they would be technologically challenging. The Board believes, however, that software likely is readily available that is capable of tabular formatting, especially in light of the increasing use of tabular disclosures under various state and federal laws. More importantly, the formatting requirements are essential to the interim rule's purposes based on consumer testing, as discussed above. Some small depository institutions, mortgage brokers, and their trade associations also suggested exempting small creditors or delaying the implementation of the overall proposal by substantial time periods to allow time for other regulatory developments to take effect.

TILA exempts from coverage persons that do not "regularly extend" consumer credit. *See* TILA Section 103(f), 15 U.S.C. 1604(f) (definition of "creditor"). Regulation Z implements this provision in § 226.2(a)(17). Thus, lenders with limited activity (in the case of mortgage lending, five or fewer loans in a year) already are exempt from all TILA disclosure requirements. Limited lending activity likely correlates to a significant extent with being a small entity. The Board believes, however, that an exemption from certain TILA disclosure requirements for small creditors that otherwise are subject to TILA and Regulation Z generally would undermine the purposes of TILA by limiting the instances where consumers would receive the benefit of the disclosures. This would be especially true if the exemption were limited to the interest rate and payment summary implemented by this interim rule. Consumers also could be confused by receiving disclosures that differ in that one respect, solely based on which creditor they applied to for a mortgage loan. Accordingly, the Board is not exempting small entities from the requirements of this interim rule.

The Board intends to establish the implementation period for the new disclosures and other new TILA requirements when it publishes a final rule under the 2009 and 2010 Closed-End Proposals. At that time, the Board will take into consideration the impact on small businesses and the time needed for them to implement the new requirements. With respect to this interim rule, the Board is affording creditors the maximum possible time to implement the interest rate and payment summary and no-guarantee-to-refinance notice requirements, by making compliance optional until the statutory effective date of January 30, 2011.

The U.S. Small Business Administration Office of Advocacy (Advocacy) commented on the IRFA generally. Advocacy asserted that the Board's IRFA failed to satisfy the requirements of the RFA in two ways. First, Advocacy stated that the IRFA lacked adequate information about the economic impact of the proposal. Second, Advocacy stated that the Board failed to give full consideration to less burdensome alternatives to the proposal.

The Board acknowledged that the overall proposal would have a significant economic impact on a substantial number of small entities but also noted that the precise costs to small entities of updating their systems and disclosures are difficult to identify. The Board noted that the impact would depend on a number of unknown factors, including the specifications of the current systems used by such entities to prepare and provide disclosures and to administer and maintain accounts, the complexity of the terms of credit products that they offer, and the range of such product offerings. *See* 74 FR 43232, 43320, Aug. 26, 2009. The Board also recognizes that the impact also includes the cost of legal counsel to implement new disclosure requirements, but that cost also is difficult to quantify. Nevertheless, as Advocacy recognized in its comment letter, in preparing an IRFA an agency may provide general, descriptive statements of the effects of a proposed rule if quantification is not practicable or reliable. 5 U.S.C. 607. Because quantification of the impact was impracticable, the Board believes the descriptive discussion, referenced above, satisfied this standard.

Most alternatives raised by commenters specifically to reduce burdens related to the loan originator compensation proposal, which is not a part of this interim rule. The Board considered alternatives to the various disclosure proposals, and discussed them throughout the **SUPPLEMENTARY INFORMATION** to the 2009 Closed-End Proposal. Despite these discussions, Advocacy asserted that the Board did not consider alternatives that are specifically meant to reduce the economic impact on small entities. The Board stated, however, that a principal goal of the Regulation Z review is to produce revised and improved mortgage disclosures that consumers will be more likely to understand and use in their decisions, while at the same time not creating undue burdens for creditors. *See* 74 FR 43232, 43234, Aug. 26, 2009. In considering alternatives to the 2009 Closed-End Proposal, the Board sought to further both of these objectives, thus all alternatives were specifically considered at least in part as to how they might reduce the economic impact on small entities.

In proposing the specific parts of the proposal being implemented by this interim rule, the Board did not identify any alternatives that might reduce the economic impact on small entities while still achieving the purposes of the disclosure. As noted above, recent amendments to TILA require these disclosures, and extensive consumer testing led to the specifics of the requirements. The Board has concluded that the required content and format are necessary to meet the purposes of TILA as amended by MDIA, and it has not identified any less burdensome alternatives that would achieve the same purposes. Accordingly, the Board did not discuss any alternatives to the interest rate and payment summary or the no-guarantee-to-refinance statement requirements. As also noted above, the Board cannot quantify precisely the costs of complying with the requirements of this interim rule. The Board sought comment, however, on any costs, compliance requirements, or changes in operating procedures arising from the application of the overall proposal, including the requirements implemented by this interim rule, to small businesses. *See* 74 FR 43232, 43320, Aug. 26, 2009. As noted above, some commenters objected to the interest rate and payment summary as burdensome, but they gave no specific cost information.

C. Description and Estimate of Small Entities to Which the Interim Rule Will Apply

The interim rule will apply to all institutions and entities that engage in closed-end lending secured by real property or a dwelling. TILA and Regulation Z have broad applicability to individuals and businesses that originate even small numbers of home-secured loans. *See* § 226.1(c)(1). As discussed in the IRFA, through data from Reports of Condition and Income (Call Reports) of depository institutions and certain subsidiaries of banks and bank holding companies, as well as data reported under the Home Mortgage Disclosure Act (HMDA), the Board can estimate the approximate number of small depository institutions and non-depository institutions that would be subject to the rules. For the majority of HMDA respondents that are not depository institutions, exact revenue information is not available.

Based on the best information available, the Board makes the following estimate of small entities that will be affected by this interim rule: According to March 2010 Call Report data, approximately 8,848 small depository institutions would be subject to the rule. Approximately 15,899 depository institutions in the United States filed Call Report data, approximately 11,218 of which had total domestic assets of $175 million or less and thus were considered small entities for purposes of the RFA. Of the 3,898 banks, 523 thrifts, 6,727 credit unions, and 70 branches of foreign banks that filed Call Report data and were considered small entities, 3,776 banks, 496 thrifts, 4,573 credit unions, and 3 branches of foreign banks, totaling 8,848 institutions, extended mortgage credit. For purposes of this Call Report analysis, thrifts include savings banks, savings and loan entities, co-operative banks and industrial banks. Further, 1,507 non-depository institutions (independent mortgage companies, subsidiaries of a depository institution, or affiliates of a bank holding company) filed HMDA reports in 2009 for 2008 lending activities. Based on the small volume of lending activity reported by these institutions, most are likely to be small entities.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The compliance requirements of the interim rule are described in part V of the SUPPLEMENTARY INFORMATION. To comply with the revised rules, small entities will be required to modify their procedures for making credit disclosures for mortgage loans. The precise costs to small entities of updating their systems and disclosures are difficult to estimate. These costs will depend on a number of unknown factors, including, among other things, the specifications of the current systems used by such entities to prepare and provide disclosures, the scope and complexity of their mortgage products, the extent to which they will require outside legal counsel to develop compliant disclosures, and their internal costs of training personnel.

E. Steps Taken To Minimize the Economic Impact on Small Entities

The Board generally prescribes model forms and clauses to facilitate compliance with its disclosure requirements under Regulation Z. In this interim rule, the Board is adopting model clauses to illustrate the interest rate and payment summary for fixed-rate mortgages, adjustable- or step-rate mortgages, mortgages with negative amortization, and mortgages with interest-only payments, as well as model clauses to illustrate the introductory rate disclosure, the balloon payment disclosure, and the no guarantee to refinance statement. In addition, as noted above, the Board is affording small creditors and other creditors the maximum possible time to implement this interim rule's requirements by making compliance optional until the statutory effective date. This regulatory flexibility analysis does not discuss alternatives to the interim rule because the Board is revising Regulation Z for the narrow purpose of carrying out its mandate to implement statutory amendments to TILA.

List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR Part 226, as set forth below:

PART 226—TRUTH IN LENDING

(Regulation Z)

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), and 1639(l); Pub. L. 111–24 § 2, 123 Stat. 1734.

Subpart C—Closed-End Credit

■ 2. Section 226.18 is amended by revising paragraph (g) introductory text and adding new paragraphs (s) and (t) to read as follows:

§ 226.18 Content of disclosures.

* * * * *

(g) *Payment schedule.* Other than for a transaction that is subject to paragraph (s) of this section, the number, amounts, and timing of payments scheduled to repay the obligation.

* * * * *

(s) *Interest rate and payment summary for mortgage transactions.* For a closed-end transaction secured by real property or a dwelling, other than a transaction secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), the creditor shall disclose the following information about the interest rate and payments:

(1) *Form of disclosures.* The information in paragraphs (s)(2)–(4) of this section shall be in the form of a table, with no more than five columns, with headings and format substantially similar to Model Clause H–4(E), H–4(F), H–4(G), or H–4(H) in Appendix H to this part. The table shall contain only the information required in paragraphs (s)(2)–(4) of this section, shall be placed in a prominent location, and shall be in a minimum 10-point font.

(2) *Interest rates—(i) Amortizing loans.* (A) For a fixed-rate mortgage, the interest rate at consummation.

(B) For an adjustable-rate or step-rate mortgage—

(*1*) The interest rate at consummation and the period of time until the first interest rate adjustment may occur, labeled as the "introductory rate and monthly payment";

(*2*) The maximum interest rate that may apply during the first five years after consummation and the earliest date on which that rate may apply, labeled as "maximum during first five years"; and

(*3*) The maximum interest rate that may apply during the life of the loan and the earliest date on which that rate may apply, labeled as "maximum ever."

(C) If the loan provides for payment increases as described in paragraph (s)(3)(i)(B) of this section, the interest rate in effect at the time the first such payment increase is scheduled to occur and the date on which the increase will occur, labeled as "first adjustment" if the loan is an adjustable-rate mortgage or, otherwise, labeled as "first increase."

(ii) *Negative amortization loans.* For a negative amortization loan—

(A) The interest rate at consummation and, if it will adjust after consummation, the length of time until it will adjust, and the label "introductory" or "intro";

(B) The maximum interest rate that could apply when the consumer must begin making fully amortizing payments under the terms of the legal obligation;

(C) If the minimum required payment will increase before the consumer must begin making fully amortizing payments, the maximum interest rate that could apply at the time of the first payment increase and the date the increase is scheduled to occur; and

(D) If a second increase in the minimum required payment may occur before the consumer must begin making fully amortizing payments, the maximum interest rate that could apply at the time of the second payment increase and the date the increase is scheduled to occur.

(iii) *Introductory rate disclosure for amortizing adjustable-rate mortgages.* For an amortizing adjustable-rate mortgage, if the interest rate at consummation is less than the fully-indexed rate, placed in a box directly beneath the table required by paragraph (s)(1) of this section, in a format substantially similar to Model Clause H–4(I) in Appendix H to this part—

(A) The interest rate that applies at consummation and the period of time for which it applies;

(B) A statement that, even if market rates do not change, the interest rate will increase at the first adjustment and a designation of the place in sequence of the month or year, as applicable, of such rate adjustment; and

(C) The fully-indexed rate.

(3) *Payments for amortizing loans—(i) Principal and interest payments.* If all periodic payments will be applied to accrued interest and principal, for each interest rate disclosed under paragraph (s)(2)(i) of this section—

(A) The corresponding periodic principal and interest payment, labeled as "principal and interest;"

(B) If the periodic payment may increase without regard to an interest rate adjustment, the payment that corresponds to the first such increase and the earliest date on which the increase could occur;

(C) That an escrow account is required, if applicable, and an estimate of the amount of taxes and insurance, including any mortgage insurance; and

(D) The sum of the amounts disclosed under paragraphs (s)(3)(i)(A) and (C) of this section or (s)(3)(i)(B) and (C) of this section, as applicable, labeled as "total estimated monthly payment."

(ii) *Interest-only payments.* If the loan is an interest-only loan, for each interest rate disclosed under paragraph (s)(2)(i) of this section, the corresponding periodic payment and—

(A) If the payment will be applied to only accrued interest, the amount applied to interest, labeled as "interest payment," and a statement that none of the payment is being applied to principal;

(B) If the payment will be applied to accrued interest and principal, the earliest date that such payments will be required and an itemization of the amount applied to accrued interest and the amount applied to principal, labeled as "interest payment" and "principal payment," respectively;

(C) The escrow information described in paragraph (s)(3)(i)(C) of this section; and

(D) The sum of all amounts required to be disclosed under paragraphs (s)(3)(ii)(A) and (C) of this section or (s)(3)(ii)(B) and (C) of this section, as applicable, labeled as "total estimated monthly payment."

(4) *Payments for negative amortization loans.* For negative amortization loans:

(i)(A) The minimum periodic payment required until the first payment increase or interest rate increase, corresponding to the interest rate disclosed under paragraph (s)(2)(ii)(A) of this section;

(B) The minimum periodic payment that would be due at the first payment increase and the second, if any, corresponding to the interest rates described in paragraphs (s)(2)(ii)(C) and (D) of this section; and

(C) A statement that the minimum payment pays only some interest, does not repay any principal, and will cause the loan amount to increase;

(ii) The fully amortizing periodic payment amount at the earliest time when such a payment must be made, corresponding to the interest rate disclosed under paragraph (s)(2)(ii)(B) of this section; and

(iii) If applicable, in addition to the payments in paragraphs (s)(4)(i) and (ii) of this section, for each interest rate disclosed under paragraph (s)(2)(ii) of this section, the amount of the fully amortizing periodic payment, labeled as the "full payment option," and a statement that these payments pay all principal and all accrued interest.

(5) *Balloon payments.* (i) Except as provided in paragraph (s)(5)(ii) of this section, if the transaction will require a balloon payment, defined as a payment that is more than two times a regular periodic payment, the balloon payment shall be disclosed separately from other periodic payments disclosed in the table under this paragraph (s), outside the table and in a manner substantially similar to Model Clause H–4(J) in Appendix H to this part.

(ii) If the balloon payment is scheduled to occur at the same time as another payment required to be disclosed in the table pursuant to paragraph (s)(3) or (s)(4) of this section, then the balloon payment must be disclosed in the table.

(6) *Special disclosures for loans with negative amortization.* For a negative amortization loan, the following information, in close proximity to the table required in paragraph (s)(1) of this section, with headings, content, and format substantially similar to Model Clause H–4(G) in Appendix H to this part:

(i) The maximum interest rate, the shortest period of time in which such interest rate could be reached, the amount of estimated taxes and insurance included in each payment disclosed, and a statement that the loan offers payment options, two of which are shown.

(ii) The dollar amount of the increase in the loan's principal balance if the consumer makes only the minimum required payments for the maximum possible time and the earliest date on which the consumer must begin making fully amortizing payments, assuming that the maximum interest rate is reached at the earliest possible time.

(7) *Definitions.* For purposes of this § 226.18(s):

(i) The term "adjustable-rate mortgage" means a transaction secured by real property or a dwelling for which the annual percentage rate may increase after consummation.

(ii) The term "step-rate mortgage" means a transaction secured by real property or a dwelling for which the interest rate will change after consummation, and the rates that will apply and the periods for which they will apply are known at consummation.

(iii) The term "fixed-rate mortgage" means a transaction secured by real property or a dwelling that is not an adjustable-rate mortgage or a step-rate mortgage.

(iv) The term "interest-only" means that, under the terms of the legal obligation, one or more of the periodic payments may be applied solely to accrued interest and not to loan principal; an "interest-only loan" is a loan that permits interest-only payments.

(v) The term "amortizing loan" means a loan in which payment of the periodic payments does not result in an increase in the principal balance under the terms of the legal obligation; the term "negative amortization" means payment of periodic payments that will result in an increase in the principal balance under the terms of the legal obligation; the term "negative amortization loan" means a loan that permits payments resulting in negative amortization, other than a reverse mortgage subject to § 226.33.

(vi) The term "fully-indexed rate" means the interest rate calculated using the index value and margin at the time of consummation.

(t) "*No-guarantee-to-refinance*" *statement.* (1) *Disclosure.* For a closed-end transaction secured by real property or a dwelling, other than a transaction secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), the creditor shall disclose a statement that there is no guarantee the consumer can refinance the transaction to lower the interest rate or periodic payments.

(2) *Format.* The statement required by paragraph (t)(1) of this section must be in a form substantially similar to Model Clause H–4(K) in Appendix H to this part.

■ 3. Appendix H to Part 226 is amended by:

■ A. Adding entries for H–4(E) through H–4(K) to the table of contents at the beginning of the appendix; and

■ B. Adding new Model Clauses H–4(E) through H–4(K) in numerical order.

Appendix H to Part 226—Closed-End Model Forms and Clauses

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BILLING CODE P

H-4(E) Fixed Rate Mortgage Interest Rate and Payment Summary Model Clause

INTEREST RATE AND PAYMENT SUMMARY

	Rate & Monthly Payment
Interest Rate	____%
Principal + Interest Payment	$_____
Est. Taxes + Insurance (Escrow) • [Includes [Private] Mortgage Insurance]	$_____
Total Est. Monthly Payment	**$____**

H-4(F) Adjustable-Rate Mortgage or Step-Rate Mortgage Interest Rate and Payment Summary Model Clause

INTEREST RATE AND PAYMENT SUMMARY

	INTRODUCTORY Rate & Monthly Payment (for first (*period*))	[**MAXIMUM during FIRST FIVE YEARS** (*date*)]	**MAXIMUM EVER** (as early as (*date*))
Interest Rate	___%	[___%]	___%
Principal + Interest Payment	$_____	[$_____]	$_____
Est. Taxes + Insurance [(Escrow)] • [Includes [Private] Mortgage Insurance]	[$_____]	[$_____]	[$_____]
Total Est. Monthly Payment	**$_____**	**[$_____]**	**$_____**

H-4(G) Mortgage with Negative Amortization Interest Rate and Payment Summary Model Clause

INTEREST RATE AND PAYMENT SUMMARY

[This loan offers you several monthly payment options. The table below shows you what your payments would be under two of these options **if the interest rate reached its maximum of___%** in the (*period*) of this loan.]

[All payments shown in the table include $___ for estimated taxes and insurance [(escrow)].

	(***Date***) [(*period*) [intro])]	[(***Date***) (1st adjustment)]	[(***Date***) (2nd adjustment)]	(***Date***) + every (*period*) after
Maximum Interest Rate	___% [(intro rate)]	**[___%]**	**[___%]**	___% (max. ever)
Full Payment Option *Monthly payments cover all principal and interest.*	**$_____**	**[$_____]**	**[$_____]**	**$_____**
Minimum Payment Option *Initial monthly payments cover no principal and only some interest and increase your loan amount.*	$_____	[$_____]	[$_____]	$_____

You will borrow an additional $_____ by (date) if you make only minimum payments on this loan.

H-4(H) Fixed Rate Mortgage with Interest Only Interest Rate and Payment Summary Model Clause

INTEREST RATE AND PAYMENT SUMMARY

	INTRODUCTORY Rate & Monthly Payment (for first ____ years)	MAXIMUM EVER (as early as ____)
Interest Rate	____%	____%
Principal Payment	- none -	$_____
Interest Payment	$_____	$_____
Est. Taxes + Insurance (Escrow)	$_____	$_____
Total Est. Monthly Payment	**$____**	**$____**

BILLING CODE C

H–4(I)—Introductory Rate Model Clause

[Introductory Rate Notice
You have a discounted introductory rate of ________ % that ends after (period).
In the (period in sequence), even if market rates do not change, this rate will increase to ____ %.]

H–4(J)—Balloon Payment Model Clause

[Final Balloon Payment due (date): $________]

H–4(K)—"No-Guarantee-to-Refinance" Statement Model Clause

There is no guarantee that you will be able to refinance to lower your rate and payments.

* * * * *

■ 4. In Supplement I to Part 226:

■ A. Under *Section 226.17—General Disclosure Requirements, 17(a) Form of disclosures, Paragraph 17(a)(1),* paragraph 1 is revised.

■ B. Under *Section 226.18—Content of Disclosures, 18(g) Payment schedule,* paragraph 6 is added, and an entry for *18(s) Interest rate and payment summary for mortgage transactions* is added.

■ C. Under Appendixes G and H—Open-End and Closed-End Model Forms and Clauses, paragraph 1 is revised.

■ D. Under Appendix H—Closed-End Model Forms and Clauses, paragraph 7 is revised.

The additions and revisions read as follows:

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart C—Closed-End Credit

* * * * *

Section 226.17—General Disclosure Requirements

17(a) Form of disclosures.

Paragraph 17(a)(1).

1. *Clear and conspicuous.* This standard requires that disclosures be in a reasonably understandable form. For example, while the regulation requires no mathematical progression or format, the disclosures must be presented in a way that does not obscure the relationship of the terms to each other. In addition, although no minimum type size is mandated (except for the interest rate and payment summary for mortgage transactions required by § 228.18(s)), the disclosures must be legible, whether typewritten, handwritten, or printed by computer.

* * * * *

Section 226.18—Content of Disclosures

* * * * *

18(g) Payment schedule.

* * * * *

6. *Mortgage transactions.* Section 226.18(g) applies only to closed-end transactions other than transactions that are subject to § 226.18(s). Section 226.18(s) applies to closed-end transactions secured by real property or a dwelling. Thus, if a closed-end consumer credit transaction is secured by real property or a dwelling, the creditor discloses an interest rate and payment summary table in accordance with § 226.18(s) and does not observe the requirements of § 226.18(g). On the other hand, if a closed-end consumer credit transaction is not secured by real property or a dwelling, the creditor discloses a payment schedule in accordance with § 226.18(g) and does not observe the requirements of § 226.18(s).

* * * * *

18(s) Interest rate and payment summary for mortgage transactions.

1. *In general.* Section 226.18(s) prescribes format and content for disclosure of interest rates and monthly (or other periodic) payments for mortgage loans. The information in § 226.18(s)(2)–(4) is required to be in the form of a table, except as otherwise provided, with headings and format substantially similar to Model Clause H–4(E), H–4(F), H–4(G), or H–4(H) in Appendix H to this part. A disclosure that does not include the shading shown in a model clause but otherwise follows the model clause's headings and format is substantially similar to that model clause. In all cases, the table should have no more than five vertical columns corresponding to applicable interest rates at various times during the loan's term; corresponding payments would be shown in horizontal rows. Certain loan types and terms are defined for purposes of § 226.18(s) in § 226.18(s)(7).

2. *Amortizing loans.* Loans described as amortizing in §§ 226.18(s)(2)(i) and 226.18(s)(3) include interest-only loans if they do not also permit negative amortization. (For rules relating to loans with balloon payments, see § 226.18(s)(5)). If an amortizing loan is an adjustable-rate mortgage with an introductory rate (less than the fully-indexed rate), creditors must provide a special explanation of introductory rates. *See* § 226.18(s)(2)(iii).

3. *Negative amortization.* For negative amortization loans, creditors must follow the rules in §§ 226.18(s)(2)(ii) and 226.18(s)(4) in disclosing interest rates and monthly payments. Loans with negative amortization also require special explanatory disclosures about rates and payments. *See* § 226.18(s)(6). Loans with negative amortization include "payment option" loans, in which the consumer is permitted to make minimum payments that will cover only some of the interest accruing each month. *See also* comment 17(c)(1)–12, regarding graduated-payment adjustable-rate mortgages.

18(s)(2) Interest rates.

18(s)(2)(i) Amortizing loans.

Paragraph 18(s)(2)(i)(A).

1. *Fixed rate loans—payment increases.* Although the interest rate will not change after consummation for a fixed-rate loan, some fixed-rate loans may have periodic payments that increase after consummation. For example, the terms of the legal obligation may permit the consumer to make interest-only payments for a specified period such as the first five years after consummation. In such cases, the creditor must include the increased payment under § 226.18(s)(3)(ii)(B) in the payment row, and must show the interest rate in the column for that payment, even though the rate has not changed since consummation. See also comment 17(c)(1)–13, regarding growth equity mortgages.

Paragraph 18(s)(2)(i)(B).

1. *Adjustable-rate mortgages and step-rate mortgages.* Creditors must disclose more than one interest rate for adjustable-rate mortgages and step-rate mortgages, in accordance with § 226.18(s)(2)(i)(B). Creditors must assume that an adjustable-rate mortgage's interest rate will increase after consummation as rapidly as possible, taking into account the terms of the legal obligation.

2. *Maximum interest rate during first five years—adjustable-rate mortgages and step-rate mortgages.* The creditor must disclose the maximum rate that could apply during the first five years after consummation. If there are no interest rate caps other than the maximum rate required under § 226.30, then the creditor should disclose only the rate at consummation and the maximum rate. Such a table would have only two columns.

i. For an adjustable-rate mortgage, the creditor must take into account any interest rate caps when disclosing the maximum interest rate during the first five years. The creditor must also disclose the earliest date on which that adjustment may occur.

ii. If the transaction is a step-rate mortgage, the creditor should disclose the rate that will apply after consummation. For example, the legal obligation may provide that the rate is 6 percent for the first two years following consummation, and then increases to 7 percent for at least the next three years. The creditor should disclose the maximum rate during the first five years as 7 percent and the date on which the rate is scheduled to increase to 7 percent.

3. *Maximum interest rate at any time.* The creditor must disclose the maximum rate that could apply at any time during the term of the loan and the earliest date on which the maximum rate could apply.

i. For an adjustable-rate mortgage, the creditor must take into account any interest rate caps in disclosing the maximum interest rate. For example, if the legal obligation provides that at each annual adjustment the rate may increase by no more than 2 percentage points, the creditor must take this limit into account in determining the earliest date on which the maximum possible rate may be reached.

ii. For a step-rate mortgage, the creditor should disclose the highest rate that could apply under the terms of the legal obligation and the date on which that rate will first apply.

Paragraph 18(s)(2)(i)(C).

1. *Payment increases.* For some loans, the payment may increase following consummation for reasons unrelated to an interest rate adjustment. For example, an adjustable-rate mortgage may have an introductory fixed-rate for the first five years following consummation and permit the borrower to make interest-only payments for the first three years. Under § 226.18(s)(3)(ii)(B), the creditor must disclose the first payment that will be applied to both principal and interest. In such a case, § 226.18(s)(2)(i)(C) requires that the creditor also disclose the interest rate that corresponds to the first payment of principal and interest, even though the interest rate will not adjust at that time. The table would show, from left to right: The interest rate and payment at consummation with the payment itemized to show that the payment is being applied to interest only; the interest rate and payment when the interest-only option ends; the maximum interest rate and payment during the first five years; and the maximum possible interest rate and payment.

18(s)(2)(ii) Negative amortization loans.

1. *Rate at consummation.* In all cases the interest rate in effect at consummation must be disclosed, even if it will apply only for a short period such as one month.

2. *Rates for adjustable-rate mortgages.* The creditor must assume that interest rates rise as quickly as possible after consummation, in accordance with any interest rate caps under the legal obligation. For adjustable-rate mortgages with no rate caps except a life-time maximum, creditors must assume that the interest rate reaches the maximum at the first adjustment. For example, assume that the legal obligation provides for an interest rate at consummation of 1.5 percent. One month after consummation, the interest rate adjusts and will adjust monthly thereafter, according to changes in the index. The consumer may make payments that cover only part of the interest accrued each month, until the date the principal balance reaches 115 percent of its original balance, or until the end of the fifth year after consummation, whichever comes first. The maximum possible rate is 10.5 percent. No other limits on interest rates apply. The minimum required payment adjusts each year, and may increase by no more than 7.5 percent over the previous year's payment. The creditor should disclose the following rates and the dates when they are scheduled to occur: A rate of 1.5 percent for the first month following consummation and the minimum payment; a rate of 10.5 percent, and the corresponding minimum payment taking into account the 7.5 percent limit on payment increases, at the beginning of the second year; and a rate of 10.5 percent and the corresponding minimum payment taking into account the 7.5 percent payment increase limit, at the beginning of the third year. The creditor also must disclose the rate of 10.5 percent, the fully amortizing payment, and the date on which the consumer must first make such a payment under the terms of the legal obligation.

18(s)(2)(iii) Introductory rate disclosure for amortizing adjustable-rate mortgage.

1. *Introductory rate.* In some adjustable-rate mortgages, creditors may set an initial interest rate that is lower than the fully-indexed rate at consummation. For amortizing loans with an introductory rate, creditors must disclose the information required in § 226.18(s)(2)(iii) directly below the table.

Paragraph 18(s)(2)(iii)(B).

1. *Place in sequence.* "Designation of the place in sequence" refers to identifying the month or year, as applicable, of the change in the rate resulting from the expiration of an introductory rate by its place in the sequence of months or years, as applicable, of the transaction's term. For example, if a transaction has a discounted rate for the first three years, § 226.18(s)(2)(iii)(B) requires a statement such as, "In the fourth year, even if market rates do not change, this rate will increase to __%."

Paragraph 18(s)(2)(iii)(C).

1. *Fully-indexed rate.* The fully-indexed rate is defined in § 226.18(s)(7) as the index plus the margin at consummation. For purposes of § 226.18(s)(2)(iii)(C), "at consummation" refers to disclosures delivered at consummation, or three business days before consummation pursuant to § 226.19(a)(2)(ii); for early disclosures delivered within three business days after receipt of a consumer's application pursuant to § 226.19(a)(1), the fully-indexed rate disclosed under § 226.18(s)(2)(iii)(C) may be based on the index in effect at the time the disclosures are provided. The index in effect at consummation (or at the time of early disclosures) need not be used if a contract provides for a delay in the implementation of changes in an index value. For example, if the contract specifies that rate changes are based on the index value in effect 45 days before the change date, creditors may use any index value in effect during the 45 days before consummation (or any earlier date of disclosure) in calculating the fully-indexed rate to be disclosed.

18(s)(3) Payments for amortizing loans.

1. *Payments corresponding to interest rates.* Creditors must disclose the periodic payment that corresponds to each interest rate disclosed under § 226.18(s)(2)(i)(A)–(C). The corresponding periodic payment is the regular payment for each such interest rate, without regard to any final payment that differs from others because of the rounding of periodic payments to account for payment amounts including fractions of cents. Balloon payments, however, must be disclosed as provided in § 226.18(s)(5).

2. *Principal and interest payment amounts; examples.*

i. For fixed-rate interest-only transactions, § 226.18(s)(3)(ii)(B) requires scheduled increases in the regular periodic payment amounts to be disclosed along with the date of the increase. For example, in a fixed-rate interest-only loan, a scheduled increase in the payment amount from an interest-only payment to a fully amortizing payment must be disclosed. Similarly, in a fixed-rate balloon loan, the balloon payment must be disclosed in accordance with § 226.18(s)(5).

ii. For adjustable-rate mortgage transactions, § 226.18(s)(3)(i)(A) requires that for each interest rate required to be disclosed under § 226.18(s)(2)(i) (the interest rate at consummation, the maximum rate during the first five years, and the maximum possible rate) a corresponding payment amount must be disclosed.

iii. The format of the payment disclosure varies depending on whether all regular periodic payment amounts will include principal and interest, and whether there will be an escrow account for taxes and insurance.

Paragraph 18(s)(3)(i)(C).

1. *Taxes and insurance.* An estimated payment amount for taxes and insurance must be disclosed if the creditor will establish an escrow account for such amounts. The payment amount must include estimated amounts for property taxes and premiums for mortgage-related insurance required by the creditor, such as insurance against loss of or damage to property, or

against liability arising out of the ownership or use of the property, or insurance protecting the creditor against the consumer's default or other credit loss. Premiums for credit insurance, debt suspension and debt cancellation agreements, however, should not be included. Except for periodic mortgage insurance premiums included in the escrow payment under § 226.18(s)(3)(i)(C), amounts included in the escrow payment disclosure such as property taxes and homeowner's insurance generally are not finance charges under § 226.4 and, therefore, do not affect other disclosures, including the finance charge and annual percentage rate.

2. *Mortgage insurance.* Payment amounts under § 226.18(s)(3)(i) should reflect the consumer's mortgage insurance payments until the date on which the creditor must automatically terminate coverage under applicable law, even though the consumer may have a right to request that the insurance be cancelled earlier. The payment amount must reflect the terms of the legal obligation, as determined by applicable state or other law. For example, assume that under applicable law, mortgage insurance must terminate after the 130th scheduled monthly payment, and the creditor collects at closing and places in escrow two months of premiums. If, under the legal obligation, the creditor will include mortgage insurance premiums in 130 payments and refund the escrowed payments when the insurance is terminated, payment amounts disclosed through the 130th payment should reflect premium payments. If, under the legal obligation, the creditor will apply the amount escrowed to the two final insurance payments, payments disclosed through the 128th payment should reflect premium payments. The escrow amount reflected on the disclosure should include mortgage insurance premiums even if they are not escrowed and even if there is no escrow account established for the transaction.

Paragraph 18(s)(3)(i)(D).

1. *Total monthly payment.* For amortizing loans, each column should add up to a total estimated payment. The total estimated payment amount should be labeled. If periodic payments are not due monthly, the creditor should use the appropriate term such as "quarterly" or "annually."

18(s)(3)(ii) Interest-only payments.

1. *Interest-only loans that are also negative amortization loans.* The rules in § 226.18(s)(3)(ii) for disclosing payments on interest-only loans apply only if the loan is not also a negative amortization loan. If the loan is a negative amortization loan, even if it also has an interest-only feature, payments are disclosed under the rules in § 226.18(s)(4).

Paragraph 18(s)(3)(ii)(C).

1. *Escrows.* See the commentary under § 226.18(s)(3)(i)(C) for guidance on escrows for purposes of § 226.18(s)(3)(ii)(C).

18(s)(4) Payments for negative amortization loans.

1. *Table.* Section 226.18(s)(1) provides that tables shall include only the information required in § 226.18(s)(2)–(4). Thus, a table for a negative amortization loan must contain no more than two horizontal rows of payments and no more than five vertical columns of interest rates.

2. *Payment amounts.* The payment amounts disclosed under § 226.18(s)(4) are the minimum or fully amortizing periodic payments, as applicable, corresponding to the interest rates disclosed under § 226.18(s)(2)(ii). The corresponding periodic payment is the regular payment for each such interest rate, without regard to any final payment that differs from the rest because of the rounding of periodic payments to account for payment amounts including fractions of cents.

Paragraph 18(s)(4)(i).

1. *Minimum required payments.* In one row of the table, the creditor must disclose the minimum required payment in each column of the table, corresponding to each interest rate or adjustment required in § 226.18(s)(2)(ii). The payments in this row must be calculated based on an assumption that the consumer makes the minimum required payment for as long as possible under the terms of the legal obligation. This row should be identified as the minimum payment option, and the statement required by § 226.18(s)(4)(i)(C) should be included in the heading for the row.

Paragraph 18(s)(4)(iii).

1. *Fully amortizing payments.* In one row of the table, the creditor must disclose the fully amortizing payment in each column of the table, corresponding to each interest rate required in § 226.18(s)(2)(ii). The creditor must assume, for purposes of calculating the amounts in this row that the consumer makes only fully amortizing payments starting with the first scheduled payment.

18(s)(5) Balloon payments.

1. *General.* A balloon payment is one that is more than two times the regular periodic payment. In a reverse mortgage transaction, the single payment is not considered a balloon payment. A balloon payment must be disclosed outside and below the table, unless the balloon payment coincides with an interest rate adjustment or a scheduled payment increase. In those cases, the balloon payment must be disclosed in the table.

18(s)(6) Special disclosures for loans with negative amortization.

1. *Escrows.* See the commentary under § 226.18(s)(3)(i)(C) for guidance on escrows for purposes of § 226.18(s)(6). Under that guidance, because mortgage insurance payments decline over a loan's term, the payment amounts shown in the table should reflect the mortgage insurance payment that will be applicable at the time each disclosed periodic payment will be in effect. Accordingly, the disclosed mortgage insurance payment will be zero if it corresponds to a periodic payment that will occur after the creditor will be legally required to terminate mortgage insurance. On the other hand, because only one escrow amount is disclosed under § 226.18(s)(6) for negative amortization loans and escrows are not itemized in the payment amounts, the single escrow amount disclosed should reflect the mortgage insurance amount that will be collected at the outset of the loan's term, even though that amount will decline in the future and ultimately will be discontinued pursuant to the terms of the mortgage insurance policy.

* * * * *

Appendixes G and H—Open-End and Closed-End Model Forms and Clauses

1. *Permissible changes.* Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. Creditors may make certain changes in the format or content of the forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the act's protection from liability, except formatting changes may not be made to model forms and samples in H–18, H–19, H–20, H–21, H–22, H–23, G–2(A), G–3(A), G–4(A), G–10(A)–(E), G–17(A)–(D), G–18(A) (except as permitted pursuant to § 226.7(b)(2)), G–18(B)–(C), G–19, G–20, and G–21, or to the model clauses in H–4(E), H–4(F), H–4(G), and H–4(H). The rearrangement of the model forms and clauses may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms and clauses. Creditors making revisions with that effect will lose their protection from civil liability. Except as otherwise specifically required, acceptable changes include, for example:

i. Using the first person, instead of the second person, in referring to the borrower.

ii. Using "borrower" and "creditor" instead of pronouns.

iii. Rearranging the sequences of the disclosures.

iv. Not using bold type for headings.

v. Incorporating certain state "plain English" requirements.

vi. Deleting inapplicable disclosures by whiting out, blocking out, filling in "N/A" (not applicable) or "0," crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multipurpose standard forms.)

vii. Using a vertical, rather than a horizontal, format for the boxes in the closed-end disclosures.

* * * * *

Appendix H—Closed-End Model Forms and Clauses

* * * * *

7. *Models H–4(D) through H–4(J).* These model clauses illustrate certain notices, statements, and other disclosures required as follows:

i. Model H–4(D) illustrates the adjustment notice required under § 226.20(c), and provides examples of payment change notices and annual notices of interest rate changes.

ii. Model H–4(E) illustrates the interest rate and payment summary table required under § 226.18(s) for a fixed-rate mortgage transaction.

iii. Model H–4(F) illustrates the interest rate and payment summary table required under § 226.18(s) for an adjustable-rate or a step-rate mortgage transaction.

iv. Model H–4(G) illustrates the interest rate and payment summary table required under § 226.18(s) for a mortgage transaction with negative amortization.

v. Model H–4(H) illustrates the interest rate and payment summary table required under § 226.18(s) for a fixed-rate, interest-only mortgage transaction.

vi. Model H–4(I) illustrates the introductory rate disclosure required by § 226.18(s)(2)(iii) for an adjustable-rate mortgage transaction with an introductory rate.

vii. Model H–4(J) illustrates the balloon payment disclosure required by § 226.18(s)(5) for a mortgage transaction with a balloon payment term.

viii. Model H–4(K) illustrates the no-guarantee-to-refinance statement required by § 226.18(t) for a mortgage transaction.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 13, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–20663 Filed 9–23–10; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Docket No. R–1378]

Regulation Z; Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff commentary.

SUMMARY: The Board is publishing final rules amending Regulation Z (Truth in Lending). The final rule implements Section 131(g) of the Truth in Lending Act (TILA), which was enacted on May 20, 2009, as Section 404(a) of the Helping Families Save Their Homes Act. TILA Section 131(g) became effective immediately upon enactment and established a new requirement for notifying consumers of the sale or transfer of their mortgage loans.

Consistent with the statute, the final rule requires a purchaser or assignee that acquires a loan to provide the disclosures in writing no later than 30 days after the date on which the loan was sold, transferred or assigned. Certain exceptions may apply if the covered person transfers or assigns the loan to another party on or before the 30th day.

DATES: *Effective Date.* This final rule is effective on January 1, 2011.

Mandatory Compliance Date. The mandatory compliance date is January 1, 2011. Covered persons may immediately comply with this amendment or continue to comply with 12 CFR 226.39 until the mandatory compliance date.

FOR FURTHER INFORMATION CONTACT: Jelena McWilliams, Attorney, or Paul Mondor, Senior Attorney; Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.,* seeks to promote the informed use of consumer credit by requiring disclosures about its costs and terms. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwelling. TILA directs the Board to prescribe regulations to carry out its purposes. TILA specifically authorizes the Board, among other things, to issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with TILA, or prevent circumvention or evasion of TILA. 15 U.S.C. 1604(a). TILA is implemented by the Board's Regulation Z. 12 CFR part 226. An Official Staff Commentary interprets the requirements of the regulation and provides guidance to creditors in applying the rules to specific transactions. *See* 12 CFR part 226, Supp. I.

On May 20, 2009, the Helping Families Save Their Homes Act of 2009 (the "2009 Act") was signed into law. Public Law 111–22, 123 Stat. 1632. Section 404(a) of the 2009 Act amended TILA to establish a new requirement for notifying consumers of the sale or transfer of their mortgage loans. The purchaser or assignee that acquires the loan must provide the required disclosures no later than 30 days after the date on which it acquired the loan. This provision is contained in TILA Section 131(g), 15 U.S.C. 1641(g), which applies to any consumer credit transaction secured by the principal dwelling of a consumer. Consequently, the disclosure requirements in Section 131(g) apply to both closed-end mortgage loans and open-end home equity lines of credit.

Section 131(g) became effective immediately upon enactment on May 20, 2009, and did not require the issuance of implementing regulations. Mortgage loans sold, or otherwise transferred on or after that date became subject to the requirements of Section 131(g), and failure to comply can result in civil liability under TILA Section 130(a). *See* 15 U.S.C. 1640(a). In November 2009, the Board issued an interim rule that was effective immediately upon publication, so that parties subject to the rule would have guidance on how to interpret and comply with the statutory requirements. 74 FR 60143, Nov. 20, 2009.

Under the Real Estate Settlement Procedures Act (RESPA), consumers must be notified when the servicer of their mortgage loan has changed.[1] The 2009 Act's legislative history reflects that, in addition to the information provided under RESPA, the Congress intended to provide consumers with information about the identity of the owner of their mortgage loan. In some cases, consumers that have an extended right to rescind the loan under TILA Section 125, 15 U.S.C. 1635, can assert that right against the purchaser or assignee. *See* TILA Section 131(c), 15 U.S.C. 1641(c). Among other things, the 2009 Act seeks to ensure that consumers attempting to exercise this right know the identity of the assignee and how to contact the assignee or its agent for that purpose. *See* 155 Cong. Rec. S5098–99 (daily ed. May 5, 2009); 155 Cong. Rec. S5173–74 (daily ed. May 6, 2009). The legislative history indicates, however, that TILA Section 131(g) was not intended to require notice when a transaction "does not involve a change in the ownership of the physical note," such as when the note holder issues mortgage-backed securities but does not transfer legal title to the loan. 155 Cong. Rec. S5099.

II. Summary of the Final Rule

The final rule requires an acquiring party to provide the disclosures in writing no later than 30 days after the date on which the loan was sold, transferred or assigned. Under the final rule, the disclosures must state (1) The name, address, and telephone number of the new owner; (2) the transfer date; (3) the name, address, and telephone number of an agent or other party authorized to receive the consumer's rescission notice and resolves issues concerning the consumer's payments on the loan (if other than owner); and (4) where the transfer of ownership is recorded.

Consistent with the statute and legislative intent, the final rule implements Section 404(a) of the 2009 Act by applying the new disclosure requirements to any person or entity that acquires ownership of an existing consumer mortgage loan, whether the acquisition occurs as a result of a

[1] RESPA is implemented by Regulation X, 24 CFR part 3500, which is issued by the Department of Housing and Urban Development (HUD).

purchase or other transfer or assignment. A person is covered by the rule if it acquires legal title to the debt obligation. Although TILA and Regulation Z generally apply only to persons to whom the credit obligation is initially made payable and that regularly engage in extending consumer credit, Section 404(a) and the final rule apply to persons that acquire mortgage loans without regard to whether they also extend consumer credit by originating mortgage loans. However, the final rule applies only to persons that acquire more than one mortgage loan in any 12-month period. A party servicing the mortgage loan is not treated as the owner of the obligation if the obligation was assigned to the servicer solely for the administrative convenience of the servicer in servicing the obligation.

To prevent the confusion that could result if consumers receive disclosures from multiple parties or outdated contact information for parties that no longer own their loan, the final rule provides three exceptions. Under the final rule, a covered person must mail or deliver the required disclosures on or before the 30th day following the date that the covered person acquired the loan. The disclosures need not be given, however, if the covered person transfers or assigns all of its interest in the loan to another party on or before that date. For example, a covered person that acquires a mortgage loan on March 15 must mail or deliver the disclosures on or before April 14. However, if the covered person sells or assigns the loan to a third party on April 14 (or earlier), the covered person need not provide the disclosures, but subsequent purchasers would have to comply with the rule. If the covered person transfers a partial interest in the loan on or before the 30th day following its acquisition and retains a partial interest in the loan, the covered person would have to comply with the rule unless one of the other exceptions applies.

A second exception applies when the owner of the mortgage loan transfers the legal title in a transaction that is subject to a repurchase agreement. In that case, the disclosures are not required if the transferor is obligated to repurchase the loan. This exception also applies when the acquiring party obtains a loan through an intermediary party instead of the transferor that is obligated to repurchase the loan. If the transferor does not repurchase the mortgage loan, the acquiring party must make the disclosures within 30 days after the date that the transaction is recognized as an acquisition on its own books and records.

A third exception applies when the covered person acquires only a partial interest in the loan and the party authorized to resolve issues concerning the consumer's payments on the loan or receive the rescission notice on behalf of a current owner does not change as a result of the transfer.

III. Legal Authority

General Rulemaking Authority

As noted above, TILA Section 105(a) directs the Board to prescribe regulations to carry out the act's purposes. 15 U.S.C. 1604(a). Section 404(a) of the 2009 Act became effective immediately without any requirement that the Board first issue implementing rules. Nevertheless, the Board finds that the legislative purpose of Section 404(a) will be furthered and its effectiveness enhanced by the issuance of rules that specify the manner in which covered persons can comply with its provisions. In addition, the Board believes that implementing regulations will facilitate covered persons' compliance with the statutory provisions.

TILA specifically authorizes the Board, among other things, to:

• Issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with the act, or prevent circumvention or evasion. 15 U.S.C. 1604(a).

• Exempt from all or part of TILA any class of transactions if the Board determines that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. The Board must consider factors identified in the act and publish its rationale at the time it proposes an exemption for comment. 15 U.S.C. 1604(f).

After considering the comments received and based on its experience in implementing and enforcing Regulation Z, for the reasons discussed in this notice the Board is using its rulemaking authority under TILA Section 105(a) and (f) to implement Section 404(a) of the 2009 Act.

IV. Overview of Comments Received

In response to the interim rule, the Board received thirty-five comment letters. Twenty letters were received from financial institutions, financial services trade associations and law firms representing the financial industry. Three letters were received from consumer groups, and twelve letters were received from individual consumers.

Financial institutions and financial services trade associations generally supported the interim rule because it clarifies statutory requirements and offers guidance to creditors and other parties that acquire mortgage loans. A few of these commenters stated that the Board should narrow the scope of the rule's coverage and broaden the exceptions. Three industry commenters sought an exemption for transfers that occur as a result of a corporate merger, acquisition, or reorganization. One commenter representing industry requested that the Board expand the exemption applicable to repurchase agreements to other short-term purchase arrangements even if the transferor is not obligated to repurchase the loan.

Consumer groups generally supported the interim rule because it ensures consumers will receive meaningful information in a timely manner. However, consumer advocates sought to expand the scope of the rule's coverage and narrow the scope of exceptions to provide additional consumer protection. Individual consumers that commented generally supported the interim rule. The comments are discussed in more detail below in part V of the **SUPPLEMENTARY INFORMATION.**

V. Section-by-Section Analysis

Section 226.39—Mortgage Transfer Disclosures

39(a) Scope

Interim Rule

Section 226.39(a) defines the scope of the interim rule's coverage. Under the interim rule, the disclosure requirements of § 226.39 apply to any "covered person" with certain exceptions specified in the rule. For purposes of the interim rule, a "covered person" includes any person (as defined in § 226.2(a)(22)) that acquires more than one existing mortgage loan in any 12-month period. Consistent with the statute, the interim rule applies to all consumer mortgage transactions secured by the principal dwelling of a consumer, whether the transaction is a closed-end mortgage loan or an extension of credit under an open-end plan.

Generally, TILA and Regulation Z apply to parties that regularly extend consumer credit. However, Section 404(a) of the 2009 Act is not limited to persons that extend credit by originating loans. Section 404(a) imposes the disclosure requirements on the "creditor that is the new owner or assignee of the debt." The Board believes that, to give effect to the legislative purpose, the term "creditor" in Section 404(a) must be construed to refer to the owner of the debt following the sale, transfer or assignment, without regard to whether that party would be a "creditor" for other purposes under TILA or Regulation Z. In issuing the interim rule, the Board declined to limit Section 404(a) to parties that originate consumer loans because such an interpretation would exempt a significant percentage of mortgage transfers to persons that purchase loans in the secondary market but do not extend consumer credit and are not "creditors" for purposes of other provisions of Regulation Z.

The interim rule also clarified that Section 404(a) does not alter the definition of "creditor" as used in TILA or Regulation Z. Thus, the fact that a person purchases mortgage loans and provides disclosures under § 226.39 does not by itself make that person a "creditor" for purposes of TILA and Regulation Z. Accordingly, in describing the persons subject to the requirements of § 226.39, the interim rule uses the term "covered person" rather than the term "creditor."

Under the interim rule, the disclosure requirements under § 226.39 apply only to persons that acquire more than one consumer mortgage transaction in any 12-month period. Generally, TILA and Regulation Z cover only parties that are regularly engaged in consumer credit transactions, who are expected to have the capacity to put systems in place to ensure compliance with the rules. In issuing the interim rule, the Board indicated that it found nothing in the legislative history indicating that Section 404(a) was intended to apply more broadly than the general TILA and Regulation Z requirements. For example, individual homeowners might choose to facilitate the sale of their home by providing seller financing and accepting the buyer's promissory note for a portion of the purchase price. At a later date, ownership of the debt obligation might transfer to another family member or to a trust for estate planning purposes, or to another person if the original note holder dies. The Board determined that a formal notice under Section 404(a) was not needed in situations involving individual transfers because the acquiring party is likely to provide adequate information to borrowers to ensure that they know to whom the loan payments should be made.

Accordingly, to prevent undue burden on individuals under the interim rule, a person who acquires only one existing mortgage loan in any 12-month period is not a covered person. The interim rule excludes persons who are not regularly engaged in the business of purchasing or investing in consumer mortgages loans, are involved in such transactions only infrequently, and would not have systems in place to comply.

Consistent with the legislative purpose, to become a "covered person" subject to § 226.39, a person must become the owner of an existing mortgage loan by acquiring legal title to the debt obligation. Consequently, § 226.39 does not apply to persons who acquire only a beneficial interest or a security interest in the loan, such as when the owner of the debt obligation uses the loan as security to obtain financing and the party providing the financing obtains a security interest in the loan. Section 226.39 also does not apply to a party that assumes the credit risk without acquiring legal title to the loans. Accordingly, an investor who purchases an interest in a pool of loans (such as mortgage-backed securities, pass-through certificates, participation interests, or real estate mortgage investment conduits) but does not acquire legal title in the underlying mortgage loan, is not covered by § 226.39. See 155 Cong. Rec. S5098–99 (daily ed. May 5, 2009). The interim rule also clarifies that the disclosures are required under § 226.39 for transfers that occur as a result of a corporate merger, acquisition, or reorganization when ownership of the loan is transferred to a different legal entity.

Section 131(f) of TILA addresses the treatment of loan servicers under the provisions of Section 131(g) which were added by the 2009 Act. Under TILA Section 131(f)(2), a party servicing the mortgage loan is not treated as the owner of the obligation if the obligation was assigned to the servicer solely for the administrative convenience. Accordingly, the requirements of § 226.39 under the interim rule do not apply to a loan servicer if the servicer holds legal title to the loan solely for administrative convenience.

Public Comment

The Board solicited comment on the definition of a "covered person" and whether the scope of the interim rule's coverage is appropriate, or whether a different standard should apply in determining which persons must comply with the disclosure requirements of § 226.39. Comment was specifically requested on whether the Board should use the same Regulation Z standard used to determine whether a person is regularly engaged in extending consumer credit, which would limit the application of § 226.39 to persons that have acquired more than five mortgage loans in the preceding or current calendar year. *See* § 226.2(a)(17)(i), footnote 3.

The Board received several comments that addressed the scope of the rule. A few industry commenters stated that the rule should cover only persons that acquire more than five mortgage loans in the preceding or current calendar year based on the standard used to determine whether a person is a "creditor" for purposes of Regulation Z. These commenters stated that a threshold of one loan in 12 months is too low.

One financial institution commenter requested that the Board exempt transfers that occur in connection with a merger of entities with no accompanying change in the servicing of the mortgage loan. The commenter stated that a merger results in a mortgage loan being combined with the assets of another entity, rather than being sold or transferred. An industry trade group requested that the Board exempt transfers that occur as a result of a merger of entities with no accompanying change in either the name or the contact information for the covered person. The commenter also stated that some corporate reorganizations or asset sales may not allow enough advance planning for the acquiring party to produce and deliver the disclosures required by § 226.39 in a timely manner. This commenter suggested that the final rule should contain a general exemption for transfers that occur as a result of a merger, or to provide a longer compliance period for such transfers.

Consumer group commenters stated that the rule should cover any person that acquires a mortgage loan, without exception. They also asserted that transfers to servicers that hold legal title solely for administrative convenience should be covered. These commenters stated that if the rule exempts servicers that take legal title solely for administrative convenience, the rule should also clarify that submitting a rescission notice to the servicer should be effective as to the actual holder. They also requested that the final rule address the remedies available in court when a violation occurs.

Final Rule

The final rule adopts the same definition of "covered person" used in the interim rule. Under the final rule, a "covered person" includes any person (as defined in § 226.2(a)(22)) that acquires more than one existing mortgage loan in any 12-month period.

Like the interim rule, the final rule exempts individual transfers because the potential benefit of covering such transactions would not outweigh the likely burden on persons who do not regularly engage in mortgage transactions. Generally, TILA only covers parties that regularly engage in consumer credit transactions who are expected to have the capacity to put systems in place to ensure compliance with the rules. The Board believes that persons who engage in a single transaction should not be expected to comply. Moreover, the Board believes that the disclosures required under § 226.39 are not needed in situations involving individual transfers because the acquiring party is directly involved with the borrower and has an incentive to ensure that the borrower knows where to send loan payments.

Like the interim rule, the final rule clarifies that, to become a "covered person" subject to the disclosure requirements under § 226.39, a person must become the owner of an existing mortgage loan by acquiring legal title to the loan. Comment 39(a)(1)–2(i) is added in the final rule to clarify that a party may become a covered person by acquiring a partial interest in a mortgage loan. Comment 39(a)(1)–2(ii) is added in the final rule to clarify that all persons that jointly acquire legal title to the loan are subject to the disclosure requirements of § 226.39. Multiple persons are deemed to jointly acquire legal title if each acquires a partial interest in the loan pursuant to the same agreement or they otherwise act in concert to acquire their interest in the loan. Comment 39(a)(1)–2(iii) is added to clarify that an acquiring party that is a separate legal entity from the transferor must provide the disclosures required by § 226.39 even if the parties are affiliated entities.

The final rule, like the interim rule, does not apply to persons who acquire only a beneficial interest or a security interest in the loan, such as when the owner of the debt obligation uses the loan as security to obtain financing and the party providing the financing obtains only a security interest in the loan. The final rule also does not apply to a party that assumes the credit risk without acquiring legal title to the loans such as an investor who purchases mortgage-backed securities.

Consistent with TILA Section 131(f), the final rule does not apply to a party servicing the mortgage loan if the obligation was assigned to the servicer solely for administrative convenience. Consumer group commenters requested that, if the final rule exempts transfers to servicers for administrative convenience, it should provide that consumers may submit a rescission notice to the servicer. The Board is addressing this issue concerning consumers' ability to send rescission notices to the servicer in a separate proposed rule published elsewhere in today's **Federal Register** (Docket No. R–1390). Consumer group commenters also requested that the final rule set forth appropriate remedies for violations of the disclosures requirements under § 226.39. The Board notes that a determination of court remedies is outside of the scope of this rulemaking. Nonetheless, in using the term "covered person" rather than "creditor" in § 226.39, the Board is not determining whether or not TILA Section 130 applies. The Board notes that Section 404(a) of the 2009 Act specifically adds TILA Section 131(g) to the list of sections covered under TILA Section 130.

The Board does not believe that an exemption for transfers that occur as a result of a corporate merger, acquisition, or reorganization is appropriate when there is a transfer of ownership to a different legal entity. The final rule is consistent with the legislative goal that consumers be notified of transfers that would require them to seek assistance from or assert their rights against a different legal entity, even if the parties are affiliated entities. The fact that a merger results in a mortgage loan being combined with the assets of another entity is not dispositive of whether the disclosure requirements under § 226.39 are triggered. If legal title in the loan is held by the same legal entity before and after the merger, there is no transfer of title and the disclosure requirements of § 226.39 are not triggered. Thus, combining assets with another entity is not in itself dispositive of whether the disclosures under § 226.39 are required.

The Board also believes that a longer compliance period for transfers that occur as a result of a merger, acquisition or reorganization would not be appropriate under the statute. Consistent with the statute and the interim rule, the final rule requires the purchaser or assignee that acquires the loan to provide the disclosures in writing no later than 30 days after the date on which the loan is sold, transferred or assigned.

39(b) Disclosure Required

Interim Rule

Section 226.39(b) contains the general requirement for covered persons to provide the disclosures required under Section 404(a) of the 2009 Act, unless one of the exceptions specified in § 226.39(c) applies. Under the interim rule, the disclosures must be mailed or delivered to the consumer on or before the 30th calendar day following the date that the covered person acquires the loan. Under the interim rule, the date on which the covered person acquires the loan is the acquisition date recognized in the books and records of the acquiring party. If there is more than one covered person, the interim rule provides that only one disclosure shall be given on behalf of all covered persons. If there is more than one consumer, a covered person may mail or deliver the disclosures to any consumer who is primarily liable on the obligation. This is consistent with the rule generally applicable to TILA disclosures. *See* TILA Section 121(a) and § 226.17(d) of Regulation Z.

The disclosure requirements of § 226.39 apply when the acquiring party is a separate legal entity from the transferor, even if the parties are affiliated entities. If there are multiple transfers, the regulation allows multiple covered persons to combine their disclosures in a single document, provided that the disclosure meets the applicable timing requirements for each person. Comment 39(b)–2 provides guidance on how multiple parties may provide a single disclosure.

Public Comment

Consumer group commenters opposed the provision in the interim rule allowing covered persons to provide the disclosures to any consumer who is primarily liable on the loan. They suggested that the final rules instead require a covered person to provide the disclosure to every consumer who is liable on the mortgage loan and any person entitled to rescind. In addition to obligors, other persons may have a right to rescind if their ownership interest in their principal dwelling will be subject to the creditor's security interest.

One industry commenter suggested that the final rule should provide more flexibility in determining the acquisition date. This commenter stated that covered persons may use an electronic mortgage registry that automatically generates and provides the disclosures when the transferor enters the closing date for the transfer and the acquirer confirms the acquisition. Because the transferor and the acquirer may not recognize the same date of transfer due to differences in their accounting systems, the commenter suggested that the disclosure should be permitted to state either the acquisition date recognized on the purchaser's books, or the date recognized on the transferor's books.

Two other industry commenters asked the Board to clarify that disclosures required by § 226.39 may be combined with other materials or disclosures, including notices of mortgage servicing transfers required by RESPA, 12 U.S.C. 2601 *et seq.*

Final Rule

The final rule clarifies that the disclosures required by § 226.39 must be provided clearly and conspicuously in writing, in a form that the consumer may keep. Consistent with the standard that applies to other disclosures under Regulation Z, the disclosures also may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 U.S.C. 7001 *et seq.* The final rule also clarifies that the disclosures under § 226.39 can be combined with other materials or disclosures, including the transfer of servicing notices required by RESPA so long as the combined disclosure satisfies the timing and other requirements in § 226.39.

Consistent with the interim rule, the final rule allows a covered person to provide notice to any consumer primarily liable on the obligation. Because § 226.39 applies to loans secured by the consumer's principal dwelling, additional copies sent to multiple obligors would typically be delivered to the same address, and would not significantly enhance consumer protection. Requiring covered persons to also deliver the disclosures to non-obligors who may be entitled to rescind would create operational difficulties because the party acquiring the loan would not necessarily know which parties other than the obligor had an interest in the property and a right to rescind at the time the credit was initially extended.

Section 404(a) requires that disclosures be provided "not later than 30 days after the date on which the mortgage loan is sold or otherwise transferred or assigned to a third party." Public Law 111–22, 123 Stat. 1632. The interim rule refers to the date of transfer as the "acquisition date" which is defined in the interim rule as "the date of acquisition recognized in the books and records of the acquiring party." The Board recognizes that different entities may use different accounting methods so that the date of transfer on the transferor's books might differ from the date of acquisition on the purchaser's books. To facilitate compliance, the final rule has been revised to clarify that the disclosures must be provided on or before the 30th day following the "date of transfer" which may be either the acquisition date recognized by the transferee, or the date recognized by the transferor. Similarly, either date may be stated on the disclosure as the date of transfer.

Multiple transfers. Like the interim rule, § 226.39(b)(4) of the final rule provides that, if a mortgage loan is acquired by one covered person and subsequently transferred to another covered person, a single disclosure may be provided on behalf of both covered persons if the disclosure satisfies the timing and content requirements applicable to each covered person. For example, if a covered person acquires a loan on March 15 with the intent to assign it to another entity on April 30, the covered person could mail a single disclosure on or before April 14, providing information for both entities, and indicating when the subsequent transfer is expected to occur. No comments were received on this aspect of the rule.

The Board recognizes, however, that in this circumstance, the exact date of a subsequent transfer may not be known at the time the disclosure is provided. Consistent with the standard in current § 226.31(d)(2), the date on which one covered person expects to transfer the loan to another covered person may be estimated when the exact information is unknown at the time the disclosure is made. Comment 39(b)(4)–2 has been added for clarification. The comment further states that information is unknown if it is not reasonably available to the covered person at the time the disclosure is made. The "reasonably available" standard requires that the covered person, acting in good faith, exercise due diligence in obtaining information. The commentary provides that a covered person normally may rely on the representations of other parties in obtaining information, and may make the disclosure using an estimated date based on information known at the time the disclosure is made, even though more precise information will be available at a later date. For example, if the covered person acquires the loan on March 15, a disclosure may be provided on April 1 stating that the loan will be assigned to another entity "on or around" April 30, even if the covered person expects to obtain information before April 14 about the expected transfer date.

Comment 39(b)(4)–3 clarifies that even if one covered person provides the disclosures for another, each person has a duty to ensure that disclosures related to its acquisition are accurate and provided in a timely manner unless an exception in § 226.39(c) applies.

Multiple covered persons. Comment 39(b)(5)–1 in the final rule clarifies that multiple covered persons who jointly acquire the loan in a single transaction must provide a single disclosure that satisfies the timing requirements for each person. If multiple covered persons jointly acquire the loan and complete the acquisition on separate dates, a single disclosure must be provided on behalf of all persons on or before the 30th calendar day following the earliest acquisition date.

Comment 39(b)(5)–2 further clarifies that if multiple covered persons each acquire a partial interest in the loan in separate and unrelated agreements and not jointly, each covered person has a duty to ensure that disclosures related to its acquisition are accurate and provided in a timely manner, unless an exception in § 226.39(c) applies. The parties may, but are not required to, provide a single disclosure that satisfies the timing and content requirements applicable to each covered person. Comment 39(b)(5)–3 clarifies that a single disclosure provided on behalf of multiple covered persons must satisfy the timing and content requirements applicable to each covered person unless an exception in § 226.39(c) applies. Comment 39(b)(5)–4 provides that even though one person provides the disclosures for another covered person, each has a duty to ensure that disclosures related to its acquisition are accurate and provided in a timely manner unless an exception in § 226.39(c) applies.

39(c) Exceptions

Interim Rule

Section 226.39(c) of the interim rule contains two exceptions to the disclosure requirements. Under § 226.39(c)(1), a covered person need not provide the disclosures if it transfers or assigns the loan to another party on or before the 30th calendar date following the date that it acquired the loan. This provision was adopted pursuant to the Board's authority to make exceptions and exemptions under TILA Sections 105(a) and 105(f). 15 U.S.C. 1604(a), 1604(f). For example, if a mortgage loan is originated on March 1 and the original creditor sells the loan to a covered person on March 15, the covered person would not be required to provide the disclosures if the loan is subsequently sold to a third party on or before April 14 under this exception.

The Board stated in the interim rule that this exception is necessary and proper to effectuate the purposes of Section 404(a) and to facilitate compliance. This exception seeks to prevent the confusion that could result if consumers receive outdated contact information for parties that no longer own their loans. After origination, a loan might be assigned to one or more entities for only a few days before it is transferred to an entity that will hold it for a much longer time period. The disclosures sent by temporary holders would provide information that most consumers are unlikely to need or use. Moreover, the disclosures from temporary holders could create information overload for many consumers and hinder their ability to determine which party should be contacted to address a concern. Thus, the Board adopted the exception in § 226.39(c)(1) pursuant to TILA Section 105(a) to effectuate TILA's purposes and facilitate compliance.

The Board also considered the relevant statutory factors in TILA Section 105(f). The Board found that use of Section 105(f) is appropriate because the disclosure of ownership interests that are held less than 30 days would not provide a meaningful benefit to consumers in the form of useful information or consumer protection. Requiring temporary holders to provide the disclosures would complicate compliance and impose unnecessary burden and expense that would not be outweighed by the benefits to consumers.[2]

Section 226.39(c)(2) of the interim rule contains a second exception to the disclosure requirements of § 226.39. In some cases, the original creditor or owner of the mortgage loan may sell or transfer the legal title to the loan to a third party to secure business financing. This is generally done in connection with a repurchase agreement that obligates the original creditor or owner to repurchase the loan. Under § 226.39(c)(2) of the interim rule, if the original creditor or owner has a repurchase obligation and does not recognize the transaction as a sale of the loan on its books and records, the acquiring party is not subject to the disclosure requirements of § 226.39. However, if the transferor does not repurchase the mortgage loan, the acquiring party must make the disclosures required by § 226.39 within 30 days after the date that the transaction is recognized as an acquisition on its books and records.

This exception was adopted pursuant to the Board's authority in TILA Sections 105(a) and 105(f). As with the exception in § 226.39(c)(1), the exception for transfers subject to a repurchase agreement in § 226.39(c)(2) was intended to prevent consumer confusion that could arise from the receipt of outdated disclosures. The Board found that requiring disclosures for these transactions would not provide a meaningful benefit to consumers in the form of useful information or protection. Without an exemption for these transactions, consumers would receive two notices: One at the time legal title in the loan is transferred, and another when the loan is repurchased shortly after. Thus, the disclosure of transfers subject to repurchase agreements would complicate compliance and impose unnecessary burden and expense for covered persons that would not be outweighed by the benefits to consumers.

Public Comment

The Board requested comment on whether the exemption in § 226.39(c)(1) is appropriate and whether a 30-day period should be shorter or longer. Consumer group commenters stated that the 30-day exception is appropriate so long as the subsequent owners are required to disclose information about any prior owner who did not provide the disclosure. These commenters suggested that the final rule clarify that each covered person must disclose a full chain of title so that all transfers of ownership throughout the history of the loan are listed in each disclosure. Consumer advocates also stated that, if the 30-day period is lengthened in the final rule, the rule should provide that (1) no foreclosure action is permitted without first providing information to the consumer about the current holder of the note and mortgage, and (2) no foreclosure action is permitted in the name of a party that no longer owns the loan.

Industry commenters generally supported the exception in § 226.39(c)(1). Several industry commenters stated that a 30-day period is too short because it fails to capture many short-term acquisitions that may be finalized shortly after the 30th day. These commenters requested that 30 days be changed to at least 60 days and preferably 90 days, so that a covered person that transfers or assigns the loan to another party on or before the 60th or 90th day would not be required to deliver the disclosures. A few industry commenters stated that listing all previous owners in every disclosure would increase the risk of consumers contacting an incorrect party that no longer owns their loan.

The Board also requested comment on whether the exception in § 226.39(c)(2) for transfers that are subject to a repurchase agreement is appropriate. Consumer group commenters opposed the exception. They believe that a disclosures should be provided with the initial transfer and a second disclosure should be provided when the transferor repurchases the loan. One industry trade association asked the Board to clarify that loans transferred under a repurchase agreement are exempt from the disclosure requirements under § 226.39 regardless of how the loan is recognized on the seller's books and records because the acquiring party may not have that information. One industry commenter stated that the exception for repurchase agreements in § 226.39(c)(2) of the interim rule is too narrow. This commenter suggested that the final rule clarify that the exception applies even if the loan is acquired from an intermediary as long as the prior holder is obligated to repurchase the loan. According to the commenter, this set of transactions usually takes between 5 days and 90 days to complete, during which time the original creditor continues to recognize the loan on its books and records.

A law firm that represents secondary market participants urged the Board to exempt certain short-term acquisitions even if they are not subject to a repurchase agreement. This commenter stated that under some financing arrangements, the acquiring party enters into a commitment to acquire the loan, then aggregate it with other loans, and subsequently transfer a pool of mortgage loans to a third party. However, the acquiring party's commitment to transfer the loans it acquires to a third party does not apply to any particular mortgage loan; rather, it applies to the type of loan described in the purchase agreement. Because the transfer to the third party might take longer than 30 days, the acquiring party cannot rely on the exception in § 226.39(c)(1) for these transactions. The commenter suggested that the final rule should exempt these kinds of transfers from the disclosure requirements of § 226.39, or, alternatively, expand the exception in

[2] In exercising its exemption authority under Section 105(f), Board must determine whether coverage of such transactions provides a meaningful benefit to consumers in light of specific factors. 15 U.S.C. 1604(f)(2). These factors, which the Board has reviewed, are (1) The amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection.

§ 226.39(c)(1) from 30 to 60 days to accommodate these transactions.

Several industry commenters requested additional exceptions. A credit union and a credit union trade association suggested that the final rule should exempt transfers of partial ownership interests to multiple covered persons in accordance with participation agreements. According to one commenter, the originating credit union retains at least ten percent of the interest in the underlying loan, and the participants generally designate a single agent to handle all matters concerning the consumer's inquiries about the loan, including rescission and modification. For example, if the consumer sends a notice of rescission to the appointed agent, the notice is deemed to be received by all participants. These commenters suggested that disclosures under § 226.39 should not be required if the originating entity retains an interest in the underlying loan, and the agent does not change as a result of the transfer. These commenters also stated that consumers may be confused by a disclosure stating that a portion of their loan has been transferred to one or more entities when the originating creditor still holds a partial interest and the agent has not changed.

One industry commenter requested that the Board exempt the assignment of a mortgage loan that is initiated by the consumer in connection with a refinancing by the assignee. This commenter explained that in some states, the refinancing lender may purchase the existing mortgage loan and enter into a modification agreement with the consumer to avoid certain costs associated with a new extension of credit. In this commenter's view, since the consumer initiated the transaction with the assignee and receives the disclosures from the new lender at closing, it may confuse the consumer to receive another set of disclosures within 30 days after the loan is modified. The commenter also expressed concerns about the unnecessary cost and burden of the additional disclosures.

Final Rule

The final rule retains the exceptions in § 226.39(c)(1) and (2) of the interim rule and also provides an additional exception which is contained in new § 226.39(c)(3). With respect to § 226.39(c)(1), the Board has retained the exception for covered persons that do not hold a loan for more than 30 calendar days after acquiring it. The Board recognizes that under some short-term financing arrangements, the covered persons may acquire the loan only temporarily, but for a period that exceeds 30 days. However, the Board believes that lengthening the 30-day period would undermine the legislative purpose. A 60-day exemption would cause some parties to wait up to 60 days before determining whether to make the disclosure for a particular loan or claim an exemption. The exemption contained in the final rule is consistent with the legislative intent that consumers receive the disclosure within 30 days after a transfer occurs, while eliminating disclosures from parties that no longer own the loan.

Comment 39(c)(1)–1 has been revised to clarify that a covered person is not required to provide the disclosures required under § 226.39 if it sells, transfers or assigns all of its interest in the mortgage loan on or before the 30th calendar day following the date that it acquired the mortgage loan. Comment 39(c)(1)–2 has been added in the final rule to address transfers of a partial interest in the mortgage loan. It clarifies that a covered person that transfers only a partial interest in the loan on or before the 30th calendar day following the date that it acquired the loan must comply with the disclosure requirements so long as it retains a partial interest in the loan on the 30th day.

The final rule does not require a covered person to disclose information about former holders of legal title. The Board is concerned that a disclosure reflecting the full chain of ownership would be complex and could create unnecessary confusion for consumers trying to determine what party to contact about their loan. Moreover, such a requirement would impose a duty on a covered person to verify the identity of all prior owners or risk liability for providing an incorrect disclosure. It is unclear whether assignees would routinely have access to this information within their own records.

The final rule also retains the exception in § 226.39(c)(2) of the interim rule which covers transfers subject to a repurchase agreement. However, in response to commenters' requests, the final rule does not require the transferor who is obligated to repurchase the loan to continue to recognize the loan as an asset on its books and records. While most repurchase arrangements are structured so that the transferor does not recognize the sale of the asset on its books and records, the Board recognizes that the acquiring party may not know how the transferor treats the asset on its books. Under the final rule, if the original owner does not repurchase the loan, the acquiring party must provide the disclosures within 30 calendar days after it recognizes the loan as an asset on its own the books and records.

The final rule has been modified to address a concern raised by one commenter about transactions involving intermediaries. Comment 39(c)(2)–2 is added to the final rule to clarify that the exception for transfers subject to a repurchase agreement applies even when the covered person acquires the loan from an intermediary party who is not the party obligated to repurchase the loan.

Consumer group commenters asked the Board to require disclosures when a loan is transferred subject to a repurchase agreement and when the repurchase occurs. The Board believes that the disclosure of all transfers subject to repurchase agreements would impose unnecessary burden and expense for covered persons that would not be outweighed by the benefits to consumers.

The final rule does not exempt short-term acquisitions for longer than 30 days that are not subject to a repurchase agreement, as requested by one commenter. These financing arrangements differ from repurchase arrangements in that the original creditor is under no obligation to repurchase the loan. Moreover, the specific loan is not subject to a purchase commitment even though it may be the type of loan described in the purchase agreement. The Board does not believe that a covered person should be exempt from the disclosure requirements if the transferor is not obligated to repurchase the loan. In addition, compliance with the exemption requested by the commenter would be difficult to enforce because the individual loan covered by the exception is not subject to a specific repurchase agreement by any other party.

The final rule includes an additional exception designated as § 226.39(c)(3), which was not included in the interim rule, in response to commenters' requests to exempt covered persons that acquire partial interests in the loan. The exemption in § 226.39(c)(3) applies to a covered person that acquires only a partial interest in the loan if the party authorized to receive the consumer's notice of the right to rescind and resolve issues concerning the consumer's payments on the loan does not change as a result of the transfer. This exception is adopted pursuant to the Board's authority in TILA Sections 105(a) and 105(f). As with the exceptions in § 226.39(c)(1) and (2), the exception for transfers of a partial interest in § 226.39(c)(3) is intended to prevent consumer confusion that could arise from the receipt of multiple disclosures.

The Board believes that Section 105(f) is appropriate for the exception in § 226.39(c)(3) because the disclosure of a partial ownership interest would not provide a meaningful benefit to consumers in the form of useful information or consumer protection. Requiring such disclosures would complicate compliance and impose unnecessary burden and expense that would not be outweighed by the benefits to consumers. The legislative history reflects that the statute was intended to ensure that consumers know the identity of the party they can contact to rescind or seek to modify the loan terms. The Board believes that the exception in § 226.39(c)(3) will not undermine the legislative purpose of Section 404(a) so long as the transfer of a partial interest does not result in a change for these purposes. The Board believes that disclosures regarding transfers of partial interests could create consumer confusion. However, if as a result of the transfer of a partial interest in the loan, a different agent or party is authorized to receive the rescission notice and resolve issues concerning the consumer's payments, the disclosures under § 226.39 must be provided. Comment 39(c)(3)–2 is added to the final rule to provide examples of when disclosures would be required in connection with a transfer of a partial interest in the loan.

The final rule does not provide an exception for transfers initiated by consumers who seek to refinance their mortgage loans. A covered person's compliance with such a rule would be difficult to determine because it would depends on a case by case factual determination. To ease the compliance burden, the covered person has the option to provide the disclosures required by § 226.39 along with other disclosures at the time of refinancing instead of 30 days later.

39(d) Content of Required Disclosures

Section 226.39(d) of the interim rule sets forth the contents of the disclosure that must be provided under this section. The disclosures must identify the loan that was acquired or transferred and, consistent with the statute, contain the following: (1) The identity, address, and telephone number of the covered person that owns the mortgage loan; (2) the date of the acquisition or transfer; (3) contact information that the consumer can use to reach an agent or party having authority to act on behalf of the covered person; (4) the location of the place where the transfer of the ownership of the debt is recorded.

Identifying the Loan

Interim rule. Under the interim rule, the disclosures required by § 226.39 must identify the loan that was acquired or transferred. The interim rule provides flexibility for covered persons to determine what information to provide for this purpose. For example, the covered person may identify the loan by stating the address of the mortgaged property along with the account number or other identification number previously known to the consumer, which may appear in a truncated format. The covered person might instead identify the loan by specifying the date on which the credit was extended and the original amount of the loan or credit line.

Public comment. One industry commentator stated that providing the account number alone should be sufficient for consumers to identify the loan, and would reduce the risk of mailing sensitive information. The commentator suggested that the final rule should clarify that the account number alone (or other identifying information already provided to the consumer) is adequate to identify the loan.

Final rule. To provide flexibility and ease compliance while protecting consumer's confidential information, the final rule provides that a covered person may use any information that would reasonably inform a consumer which loan was acquired or transferred. Comment 39(d)–1 in the interim rule has been retained and provides examples that are merely illustrations, including that the covered person may identify the loan by stating the address of the mortgages property along with the account number, or just the loan number previously disclosed to the consumer.

Name, Address, and Telephone Number of Covered Person

Interim rule. Section 226.39(d)(1) implements the requirement that covered persons provide their name, address and telephone number. Under the interim rule, the party identified must be a covered person who owns the mortgage loan, regardless of whether another party services the loan or is the covered person's agent. The covered person has the option of also providing an electronic mail address or internet Web site address but is not required to do so. Section 226.39(d)(1) provides that if there is more than one covered person, the required information must be provided for each person.

Public comment. The Board specifically solicited comments on whether the identification of multiple parties might confuse consumers and whether the final rule should limit the number of covered persons identified. One industry commenter asserted that providing information for multiple covered persons would confuse consumers, and that the disclosure should contain only the address and telephone number of one covered person authorized to receive payments and handle questions about the loan.

Final rule. Like the interim rule, the final rule requires covered persons to state their name, address and telephone number on the disclosure. Under § 226.39(b)(4) in the final rule, if a mortgage loan is acquired by a covered person and subsequently transferred to another covered person, a single disclosure may be provided on behalf of both persons so long as the disclosure satisfies the timing and content requirements applicable to each person. Section 226.39(d)(1) of the final rule specifies that a single disclosure provided for multiple transfers must state the name, address, and telephone number of each covered person.

Section 226.39(b)(5) of the final rule provides that, if multiple covered persons jointly acquire the loan, a single disclosure must be provided on behalf of all covered persons. Section 226.39(d)(1) of the final rule provides that the single disclosure must provide the name, address and telephone number of each covered person unless one of the covered persons has been authorized in accordance with § 226.39(d)(3) to receive the consumer's notice of the right to rescind and to resolve issues concerning the consumer's payments on the loan. In that case, the disclosure may state the name, address and telephone number only for that covered persons.

The Board recognizes that transfers occur under a variety of circumstances and, in case of multiple covered persons, it may not always be clear which covered person should be identified to best effectuate the legislative goal, particularly if none of them serves as agent or servicer. Based on comments received, it is the Board's understanding that most transfers of partial interests to multiple parties in a joint acquisition generally involve a transfer to a single entity created specifically to facilitate the transaction. In that case, only the name of that single entity that acquires legal title to the loan may be shown as the owner on the disclosure. However, to the extent that partial interests in the loan are held by multiple persons that jointly acquire the loan, the name, address and telephone number of each covered person must be provided on the disclosure.

Providing contact information for multiple covered persons when there are multiple transactions under § 226.39(b)(4) should not create confusion because disclosure of the date of transfer for each covered person should clarify which covered party currently owns the loan. The final rule also provides additional flexibility when multiple covered persons that jointly acquire the loan are identified under § 226.39(b)(5). Section 226.39(d)(1) of the final rule has been revised so that contact information need only be provided for one covered person if that person is also authorized in accordance with § 226.39(d)(3) to receive the rescission notice and resolve issues concerning the consumer's payments on the loan. If no covered person is authorized for these purposes, the disclosure must state the name, address and telephone number for all covered persons.

Similarly, comment 39(d)(1)(ii)–2 has been added to clarify that if multiple covered persons acquire partial interests in the loan in separate transactions and not jointly, each covered person has to comply with the disclosure requirements under § 226.39 by providing its name, address and telephone number.

Acquisition Date

Interim rule. Section 226.39(d)(2) in the interim rule requires disclosure of the date that the covered person acquired the loan, which is "the date of acquisition recognized in the books and records of the acquiring party."

Public comment. One industry commenter noted that the date of acquisition on the purchaser's books may not be same date recognized on the transferor's books. This commenter requested that the purchaser be permitted to disclose either the acquisition date recognized on the purchaser's books or the date recognized on the transferor's books.

Final rule. To facilitate compliance, the final rule permits a covered person to disclose either the date of acquisition recognized in the books and records of the acquiring party, or the date of transfer recognized in the books and records of the transferring party, as discussed above. The date disclosed in the notice would also be used to determine if the disclosure was provided in a timely manner.

Agent's Contact Information

Interim rule. Under § 226.39(d)(3), a covered person must identify and provide contact information for the agent or party having authority to act on behalf of the covered person. Under the interim rule, the disclosure must identify one or more persons who are authorized to receive legal notices on behalf of the covered person and resolve issues concerning the consumer's payments on the loan. However, contact information for an agent is not required under § 226.39(d)(3) if the consumer can use the information for the covered persons provided under paragraph § 226.39(d)(1) for these purposes. The interim rule does not require that a covered person designate an agent or other party, but merely requires that contact information be disclosed when there is such an agent, so that consumers can direct their inquiries to the appropriate party.

The interim rule also recognizes that separate entities may be authorized by the owner of the loan to act on its behalf for different purposes. The interim rule requires a covered person to identify the party authorized to receive legal notices to ensure that consumers have sufficient information to assert legal claims, including a right to rescind the loan, if applicable. If the covered person appoints a different agent to resolve loan servicing issues, contact information must be provided for each agent, and the disclosure must state the extent to which the authority of each agent differs. For example, the disclosure should indicate if only one of the agents is authorized to receive legal notices or only one is authorized to resolve issues concerning payments.

Under the interim rule, a covered person may comply with § 226.39(d)(3) by providing only the name and telephone number of the agent or authorized party if the consumer can use the telephone number to obtain that party's address. Comment was solicited on whether the rule should require that the address be included in the disclosure.

Public comment. Consumer group commenters stated that the agent's address should be required in the disclosure because borrowers may mistakenly use the telephone number to rescind, which must be done in writing. They also requested that the Board require more information to be disclosed about the consumer's right to file qualified written requests under RESPA.

Several industry groups stated that the requirement to identify an agent or person authorized to receive "legal notice" is too vague, and noted that the rules for serving legal process vary by type of action and jurisdiction. They asserted that the general reference to "legal notice" would create compliance difficulties.

Several industry commenters stated that disclosing multiple contacts for different purposes would increase the risk that consumers may contact the wrong party. One industry commenter suggested that the Board require the identification of an agent or person authorized to receive "rescission and modification requests," and, if no such person has been authorized, the owner should be required to state that such requests should be directed to the owner. Another industry commenter was concerned that covered persons would be required to list all agents, and noted that the statute does not reference rescission claims.

Final rule. The final rule is revised to require a covered person to provide the name, address and telephone number for the agent or other party having authority to receive a rescission notice and resolve issues concerning the consumer's payments on the loan. Section 226.39(d)(3) does not require a covered person to list contact information for an agent or other party if the consumer can use the covered person's contact information for these purposes. If multiple agents are listed on the disclosure, the disclosure must state which one is authorized to receive the rescission notice and which one is authorized to resolve issues concerning the consumer's payments on the loan. The Board is requiring that the agent's address be included on the disclosure to avoid consumer confusion about the need to provide a written notice regarding rescission.

To facilitate compliance and simplify the disclosure, comment 39(d)(3)–1 provides that, if an agent or other party is authorized to receive the rescission notice and resolve issues concerning the consumer's payments on the loan, the disclosure need only state that the consumer may contact that agent regarding any questions concerning consumer's account without specifically mentioning rescission or payment issues.

Recording Location

Interim rule. Section 404(a) and the interim rule require that the disclosure state the location of the place where the transfer of ownership of the debt is recorded. When a mortgage loan is sold, however, the transfer in ownership of the debt instrument typically is not recorded in public records. The new owner's security interest in the property that secures the debt may or may not be recorded in the public land records or, if it is recorded, it may not yet be recorded at the time the disclosure is sent.

Under the interim rule, if the transfer of ownership has not been recorded in public records at the time the disclosure is provided, the covered person can comply with the rule by stating this fact. Whether or not the transfer of ownership has been recorded in public records at the time the disclosure is made, the disclosure may state that the transfer "is or may be recorded" at the specified location. A covered person is not required to provide the postal address for the governmental office where the covered person's ownership interest is recorded or the name of the jurisdiction where the property is located. For example, under the interim rule it is sufficient to disclose that the transaction is or may be recorded in the office of public land records or the recorder of deeds office "for the county or local jurisdiction where the property is located."

Under the interim rule, the covered person also has the option of disclosing the location where the covered person's security interest in the property is or may be recorded. In light of the fact that the transfer in ownership of the debt instrument usually is not recorded in public records, the Board specifically solicited comment on whether disclosure of the location where the security interest is recorded should be required.

Public comment. Consumer group commenters generally supported the approach in the interim rule, and asked the Board to require disclosure of the location where the security interest is filed. One industry trade association commented that requiring a disclosure regarding the filing of the security interest would impose considerable burden and cost, and stated that the disclosure required by the interim rule is sufficient. Another industry trade association agreed that most borrowers are already aware of the location where the security interest is recorded, and requiring a more specific disclosure would place considerable burden on the industry since most loan servicers do not have easy access to this information in their servicing systems.

Final rule. The final rule is substantially the same as the interim rule, with some modifications for clarity. Section 226.39(d)(4) requires the covered person to disclose where transfer of ownership of the debt to the covered person is or may be recorded, or, alternatively, that the transfer of ownership has not been recorded in public records at the time the disclosure is provided. Comment 39(d)(4)–1 clarifies that the disclosure may state that the transfer of ownership of the debt has not been recorded in public records at the time the disclosure is provided, if that is the case, or that it is or may be recorded in the office of public land records or the recorder of deeds office for the county or local jurisdiction where the property is located.

As stated in the interim rule, the Board believes that § 226.39(d)(4) appropriately addresses the operational issues regarding the land recording process and provides the necessary flexibility for compliance purposes without impairing the legislative purpose. The Board adopted this approach after considering the relative costs and benefits of requiring that the disclosure provide more detailed information. Industry representatives stated that this information may not be readily accessible to the acquiring party. A requirement to provide the name and address of the governmental office would require parties that provide such notices to develop and maintain a system for matching the property address to the correct governmental office, and keeping the database up to date with correct address information. The Board does not believe that this would provide substantial benefit to consumers because they presumably know the county or jurisdiction in which the property is located and can easily obtain the address of the governmental office from public directories or other sources.

39(e) Optional disclosures

Interim Rule

Section 226.39(e) of the interim rule states that a covered person may, at its option, provide with the disclosures "any other relevant information" regarding the transaction. For example, the covered person may choose to inform consumers that the location where they should send mortgage payments has not changed. The Board solicited comment on whether the rule should include any additional disclosure requirements.

Public Comment

Two industry trade associations requested the Board to specify in the final rule that the disclosure requirements may include a statement requiring the consumer to contact only the authorized agent, such as the servicer, rather than the covered party. These commenters expressed concerns that consumers may seek to contact a covered person that invests in the loan but does not have the capacity to handle consumer inquiries

Final Rule

Consistent with the statute and the interim rule, the final rule permits covered persons, in their sole discretion, to include additional information that they might deem relevant or helpful to consumers. The Board believes that it would be inconsistent with the statutory goal to permit covered persons to disclose that the consumer is not permitted to use the contact information provided for the covered person.

V. Final Regulatory Flexibility Analysis

In accordance with Section 4 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* the Board is publishing a final regulatory flexibility analysis for the final rule. The RFA generally requires an agency to assess the impact a rule is expected to have on small entities.[3] However, under Section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under Section 604 of the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and stated the factual basis for such certification.

The Board continues to believe that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule is narrowly designed to implement the statutory amendments to TILA made by Section 404(a) of the 2009 Act. Covered persons, including small entities, had to comply with Section 404(a) immediately upon its enactment on May 20, 2009, whether or not the Board amends Regulation Z to conform the regulation to the statute. The Board's final rule is intended to provide guidance to persons covered by the rule on how to interpret and comply with the statutory requirements, and to ensure that consumers receive meaningful notices consistent with the legislative goal.

A. Reasons for the Final Rule

As indicated above, the 2009 Act was signed into law on May 20, 2009. Section 404(a) amended TILA to establish a new requirement for notifying consumers of the sale, assignment, or other transfer of their mortgage loans. This requirement

[3] Under standards the U.S. Small Business Administration sets (SBA), an entity is considered "small" if it had $175 million or less in assets for banks and other depository institutions; and $6.5 million or less in revenues for non-bank mortgage lenders, mortgage brokers, and loan servicers. U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

became effective immediately upon enactment on May 20, 2009, and did not require the issuance of implementing regulations.

Congress enacted TILA based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. One of the stated purposes of TILA is to provide meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and avoid the uninformed use of credit.

B. Summary of the 2009 Act

As described previously, the purchaser or assignee that acquires a loan must provide the required disclosures no later than 30 days after the date on which the loan is acquired. Section 226.39(c) of the rule provides an exception if the covered person transfers or assigns the loan to another party on or before that date. Section 226.39(d) sets forth the content of the disclosure. Consistent with the statute, the final rule requires that the disclosure contain the following: (1) The name, address, and telephone number of the covered person who owns the mortgage loan; (2) the date of transfer; (3) the name, address and telephone number of an agent or other party authorized to act on behalf of the owner; and (4) where the transfer of ownership of the debt is or may be recorded.

C. Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** sets forth the objectives and the legal basis for the final rule. The legal basis for the final rule is in TILA Sections 105(a), 105(f). 15 U.S.C. 1604(a), 1604(f). A more detailed discussion of the Board's rulemaking authority is set forth in the **SUPPLEMENTARY INFORMATION.**

D. Description of Small Entities to Which the Final Rule Applies

The final rule applies to all persons that acquire more than one existing mortgage loan in any 12-month period, other than servicers that take title solely as an administrative convenience to enable them to service the loans. The Board cannot identify with certainty the number of small entities that meet this definition. The Board can estimate, however, approximate numbers of small entities that purchase mortgage loans, as discussed below.

The Board can identify through data from Reports of Condition and Income ("call reports") approximate numbers of small depository institutions that would be subject to the final rules if they acquire more than one mortgage loan in a 12-month period. Based on March 2010 call report data, approximately 8,845 small institutions would be subject to the final rule. Approximately 15,658 depository institutions in the United States filed call report data, approximately 11,148 of which had total domestic assets of $175 million or less and thus were considered small entities for purposes of the Regulatory Flexibility Act. Of 3,898 banks, 523 thrifts and 6,727 credit unions that filed call report data and were considered small entities, 3,776 banks, 496 thrifts, and 4,573 credit unions, totaling 8,845 institutions, extended mortgage credit. For purposes of this analysis, thrifts include savings banks, savings and loan entities, co-operative banks and industrial banks.

The Board cannot identify with certainty the number of small non-depository institutions because they do not file call reports. Neither can the Board determine with certainty how many of the 11,148 institutions identified above as small entities acquired mortgage loans in 2009. Although an estimated 8,845 such institutions extended mortgage credit, the Board recognizes that not all entities that extend mortgage credit also acquire existing mortgage loans. Moreover, the reverse is also true: There are entities that acquire existing mortgage loans but do not extend mortgage credit.

The Board has another source of information, data obtained under the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801 *et seq.;* 12 CFR part 203. Based on loan purchases reported for 2008 under HMDA, the Board estimates that 553 of the reporting institutions engaged in more than one mortgage acquisition. The 8,388 lenders covered by HMDA in 2008 accounted for the majority, but not all, of the home lending in the United States. Accordingly, the 553 institutions that reported loan purchases in 2008 probably do not represent all mortgage acquirers; institutions must report loan purchases only if they are required to report under HMDA based on loan originations and assets. Nevertheless, the Board's experience has been that the HMDA data are reasonably representative of the whole mortgage market.

A total of 2,921,684 loan purchases were reported under HMDA in 2008 by entities reporting more than one purchase (and thus subject to the final rule). Of those loan purchases, 2,773,918 were reported by depository institutions. Of those depository institution loan purchases, 2,122,288 (76.5%) were reported by large depository institutions (assets greater than $175 million), and 651,630 (23.5%) were reported by small depository institutions (assets of $175 million or less). Of the 553 HMDA reporters reporting more than one loan purchase, 502 were depository institutions. Of those 502 depository institutions, 387 (77.1%) were large and 115 (22.9%) were small. Those 115 small depository institutions represent just slightly less than one percent (0.97%) of the 11,907 total small institutions estimated above from call report data.

A total of 147,766 loan purchases were reported under HMDA by non-depository institutions that reported more than one loan purchase in 2008. The Board cannot tell from the HMDA data how many of those loan purchases were reported by small entities. Neither can the Board tell how many of the 51 non-depository institutions that reported those loan purchases are small entities. If the relative shares of small entities among small and large non-depository institutions do not differ significantly from those among depository institutions, however, the shares for non-depository institutions can be estimated. On that basis, the Board estimates that 12 small non-depository institutions reported 34,725 loan purchases and that 39 large non-depository institutions reported 113,041 loan purchases (estimates are rounded to whole numbers).

Using the foregoing numbers from 2008 HMDA data for depository institutions and the foregoing estimates for non-depository institutions, the Board estimates the following numbers for all entities reporting under HMDA combined: Of the 2,921,684 loan purchases reported by 553 entities reporting more than one purchase, 2,235,329 (76.5%) were reported by 426 large entities (77%), and 686,355 (23.5%) were reported by 127 small entities (23%). Based on these estimates, less than one-quarter of the institutions reporting covered loan purchases under HMDA were small entities, and less than one-quarter of the covered loan purchases reported were reported by small entities.

The foregoing data are not complete in many respects. Not all depository institutions that file call reports are reporters under HMDA, and not all HMDA reporters file call reports. Further, some unknown number of entities purchase more than one mortgage loan in any 12-month period and yet file neither call reports nor HMDA data; how many of those are small entities also is unknown.

Nevertheless, if one assumes that the existing data are reasonably representative of the market as a whole, they present an overall picture of minimal economic impact on small entities. For all these reasons, the Board believes that the final rule will not have a significant economic impact on a substantial number of small entities.

E. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The compliance requirements of the final rules are described in the **SUPPLEMENTARY INFORMATION.** As indicated above, the Board is adopting a new disclosure rule requiring that consumers receive notice when ownership of their mortgage loan is transferred. The Board is aware that numerous covered persons are already complying with these statutory provisions, which became effective on May 20, 2009. Therefore the additional burden imposed by the Board's rule itself is likely to be minimal. Furthermore, the information required to be provided is easily obtainable by covered persons. The covered person must provide contact information for itself and any agent (but is not required to designate an agent), may use the acquisition date on its own books and records, and may generally describe the location where the covered person's interest in the property securing the mortgage loan is or may be recorded. This information generally is already required by the statute.

Based on informal surveys of industry representatives and practices in effect, the Board understands that entities are likely to designate servicers as their agents. Servicers already respond to consumer requests on the behalf of covered persons. Therefore, other than providing the disclosure itself, covered persons (including those who are small entities) are not likely to incur significant burden in responding to consumer requests. Furthermore, the Board has provided an exception to the rule for mortgage owners who do not hold the loan more than 30 days. The Board believes that this exception balances the needs of consumers for information with the burdens on industry of compliance and the potential for confusion to consumers of receiving multiple disclosures.

F. Other Federal Rules

The Board has not identified other rules that conflict with the final rule. As indicated previously, under RESPA and HUD's Regulation X, consumers must be notified when the servicer of their mortgage loan has changed. Therefore, the disclosure of contact information for the agent of the owner of the mortgage loan, typically the servicer under applicable agreements, is already generally required by law. As a result of existing requirements, servicers must disclose their contact information and are subject to consumer calls regarding administration of payment information.

G. Significant Alternatives to the Final Rule

As noted above, the final rule implements the statutory requirements of the 2009 Act that were effective on May 20, 2009. The Board has implemented these requirements to minimize burden while retaining benefits to consumers. The Board was not required to issue rules but has decided that rules are needed to clarify who is subject to the requirements and what information must be disclosed, and to ensure that consumers receive disclosures of ownership that are consistent with legislative objectives. The Board did not receive comment on any significant alternatives that would minimize the impact of the final rule on small entities.

VI. Effective Date

This final rule will become effective on October 25, 2010, however, compliance with the final rule will not become mandatory until January 1, 2011. Prior to the mandatory compliance date, covered persons continue to be subject to the statutory requirements but have the option to comply with either the interim rule or this final rule. This should facilitate compliance by covered persons who might need to revise their disclosures or implement other changes under the final rule. Specifically, under the interim rule, the required disclosure need to state only the name and telephone number for an agent that is authorized to receive legal notices on behalf of the owner, so long as the telephone number can be used to obtain the agent's address. Under the final rule, however, the agent's address must be included on the disclosure. This may require some secondary market purchasers to revise their disclosure forms. The Board believes that it is reasonable to afford covered persons until January 1, 2011 to implement the changes required by the final rule.

TILA Section 105(d) generally provides that a regulation requiring any disclosure that differs from the disclosures previously required shall have an effective date no earlier than "that October 1 which follows by at least six months the date of promulgation." The Board finds, however, that the legislative mandate represented by Section 404(a) is inconsistent with the significant delay that would be imposed under the literal language of Section 105(d). In enacting Section 404(a), the Congress imposed disclosure requirements that became mandatory immediately, without any requirement for implementing regulations. Thus, the disclosure requirements imposed by Section 404(a) have been mandatory since May 20, 2009.

The Board has clear authority under TILA Section 105(a) to issue implementing rules, including rules that interpret the statutory requirements and establish exceptions. The Board believes that the Congress did not intend to permit the Board to issue rules to implement Section 404(a) and clarify a covered persons' compliance duty while also allowing the issuance of such rules to delay implementation of Section 404(a) which, on its face, was effective immediately upon enactment. Accordingly, the Board issued interim rules in November 2009 that became effective upon publication. The Board finds that the public interest is best served by making these final rules effective in the manner described above, which gives effect to the legislative intent of Section 404(a) rather than the provisions of TILA Section 105(d).

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this final rule is found in 12 CFR 226.39. The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0199.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq.*). Since the Board does not collect any information, no issue of confidentiality arises. The respondents/recordkeepers are persons or entities that acquire legal title to more than one mortgage loan in any 12-month period, including for-profit financial institutions and small businesses.

TILA and Regulation Z are intended to ensure effective disclosure of the costs and terms of credit to consumers. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required in connection with certain products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. To ease the burden and cost of complying with Regulation Z (particularly for small entities), the Board provides model forms, which are appended to the regulation. TILA and Regulation Z also contain rules concerning credit advertising. Creditors are required to retain evidence of compliance with Regulation Z for 24 months (12 CFR 226.25), but Regulation Z does not specify the types of records that must be retained.

Under the PRA, the Board accounts for the paperwork burden associated with Regulation Z for the state member banks and other entities supervised by the Board that engage in activities covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the institutions supervised by the Federal Reserve System as: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other federal agencies account for the paperwork burden imposed on the entities for which they have administrative enforcement authority under TILA.

As mentioned in the preamble, on November 20, 2009, a notice of interim final rulemaking was published in the **Federal Register** (74 FR 60143). The comment period for this notice expired January 19, 2010. No comments specifically addressing the burden estimate were received; therefore, the burden estimates will remain unchanged as published in the notice. The final rule will increase the total annual burden under Regulation Z by 9,248 hours from 1,488,114 [4] to 1,497,362 hours.

The other federal financial agencies: Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA) are responsible for estimating and reporting to OMB the total paperwork burden for the domestically chartered commercial banks, thrifts, and federal credit unions and U.S. branches and agencies of foreign banks for which they have primary administrative enforcement jurisdiction under TILA Section 108(a), 15.U.S.C.1607(a). These agencies are permitted, but are not required, to use the Federal Reserve's burden estimation methodology. Using the Federal Reserve's method, the total current estimated annual burden for the approximately 16,200 domestically chartered commercial banks, thrifts, and federal credit unions and U.S. branches and agencies of foreign banks supervised by the Federal Reserve, OCC, OTS, FDIC, and NCUA under TILA would be approximately 19,610,245 hours. The new requirement will impose a one-time increase in the estimated annual burden for such institutions by 648,000 hours to 20,258,245 hours. On a continuing basis the new requirement will impose an increase in the estimated annual burden by 1,555,200 to 21,165,445 hours. The above estimates represent an average across all respondents; the Federal Reserve expects variations between institutions based on their size, complexity, and practices.

The Board has a continuing interest in public opinion on its collections of information. At any time, comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for enhancing the quality of information collected and ways for reducing the burden on respondent, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

List of Subjects in 12 CFR Part 226

Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in Lending.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), and 1639(l); Pub. L. 111–24 § 2, 123 Stat. 1734.

Subpart E—Special Rules for Certain Home Mortgage Transactions

■ 2. Revise § 226.39 to read as follows:

§ 226.39 Mortgage transfer disclosures.

(a) *Scope.* The disclosure requirements of this section apply to any covered person except as otherwise provided in this section. For purposes of this section:

(1) A "*covered person*" means any person, as defined in § 226.2(a)(22), that becomes the owner of an existing mortgage loan by acquiring legal title to the debt obligation, whether through a purchase, assignment or other transfer, and who acquires more than one mortgage loan in any twelve-month period. For purposes of this section, a servicer of a mortgage loan shall not be treated as the owner of the obligation if the servicer holds title to the loan, or title is assigned to the servicer, solely for the administrative convenience of the servicer in servicing the obligation.

(2) A "*mortgage loan*" means any consumer credit transaction that is secured by the principal dwelling of a consumer.

(b) *Disclosure required.* Except as provided in paragraph (c) of this section, each covered person is subject to the requirements of this section and shall mail or deliver the disclosures required by this section to the consumer on or before the 30th calendar day following the date of transfer.

(1) *Form of disclosures.* The disclosures required by this section shall be provided clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures required by this section may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

(2) *The date of transfer.* For purposes of this section, the date of transfer to the covered person may, at the covered person's option, be either the date of acquisition recognized in the books and records of the acquiring party, or the date of transfer recognized in the books and records of the transferring party.

(3) *Multiple consumers.* If more than one consumer is liable on the obligation, a covered person may mail or deliver the disclosures to any consumer who is primarily liable.

(4) *Multiple transfers.* If a mortgage loan is acquired by a covered person and subsequently sold, assigned, or otherwise transferred to another covered person, a single disclosure may be provided on behalf of both covered

[4] The burden estimate for this final rulemaking includes burden addressing changes to implement provisions of the Credit Card Accountability Responsibility and Disclosure (CCARD) Act of 2009 (Docket no. R–1370) (75 FR 7658), however, it does not include the burden addressing changes to implement the following provisions announced in separate rulemakings:

• Closed-End Mortgages (Docket No. R–1366) (74 FR 43232), or

• Home-Equity Lines of Credit (Docket No. R–1367) (74 FR 43428).

persons if the disclosure satisfies the timing and content requirements applicable to each covered person.

(5) *Multiple covered persons.* If an acquisition involves multiple covered persons who jointly acquire the loan, a single disclosure must be provided on behalf of all covered persons.

(c) *Exceptions.* Notwithstanding paragraph (b) of this section, a covered person is not subject to the requirements of this section with respect to a particular mortgage loan if:

(1) The covered person sells, or otherwise transfers or assigns legal title to the mortgage loan on or before the 30th calendar day following the date that the covered person acquired the mortgage loan which shall be the date of transfer recognized for purposes of paragraph (b)(2) of this section;

(2) The mortgage loan is transferred to the covered person in connection with a repurchase agreement that obligates the transferor to repurchase the loan. However, if the transferor does not repurchase the loan, the covered person must provide the disclosures required by this section within 30 days after the date that the transaction is recognized as an acquisition on its books and records; or

(3) The covered person acquires only a partial interest in the loan and the party authorized to receive the consumer's notice of the right to rescind and resolve issues concerning the consumer's payments on the loan does not change as a result of the transfer of the partial interest.

(d) *Content of required disclosures.* The disclosures required by this section shall identify the loan that was sold, assigned or otherwise transferred, and state the following:

(1) The name, address, and telephone number of the covered person.

(i) If a single disclosure is provided on behalf of more than one covered person, the information required by this paragraph shall be provided for each of them unless paragraph (d)(1)(ii) of this section applies.

(ii) If a single disclosure is provided on behalf of more than one covered person and one of them has been authorized in accordance with paragraph (d)(3) of this section to receive the consumer's notice of the right to rescind and resolve issues concerning the consumer's payments on the loan, the information required by paragraph (d)(1) of this section may be provided only for that covered person.

(2) The date of transfer.

(3) The name, address and telephone number of an agent or party authorized to receive notice of the right to rescind and resolve issues concerning the consumer's payments on the loan. However, no information is required to be provided under this paragraph if the consumer can use the information provided under paragraph (d)(1) of this section for these purposes.

(4) Where transfer of ownership of the debt to the covered person is or may be recorded in public records, or, alternatively, that the transfer of ownership has not been recorded in public records at the time the disclosure is provided.

(e) *Optional disclosures.* In addition to the information required to be disclosed under paragraph (d) of this section, a covered person may, at its option, provide any other information regarding the transaction.

■ 3. In Supplement I to Part 226, under Subpart E, the entry for *Section 226.39—Mortgage Transfer Disclosures* is revised to read as follows:

Supplement I to Part 226—Official Staff Interpretations

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 226.39—Mortgage transfer disclosures

39(a) Scope.

Paragraph 39(a)(1).

1. *Covered persons.* The disclosure requirements of this section apply to any "covered person" that becomes the legal owner of an existing mortgage loan, whether through a purchase, or other transfer or assignment, regardless of whether the person also meets the definition of a "creditor" in Regulation Z. The fact that a person purchases or acquires mortgage loans and provides the disclosures under this section does not by itself make that person a "creditor" as defined in the regulation.

2. *Acquisition of legal title.* To become a "covered person" subject to this section, a person must become the owner of an existing mortgage loan by acquiring legal title to the debt obligation.

i. *Partial interest.* A person may become a covered person by acquiring a partial interest in the mortgage loan. If the original creditor transfers a partial interest in the loan to one or more persons, all such transferees are covered persons under this section.

ii. *Joint acquisitions.* All persons that jointly acquire legal title to the loan are covered persons under this section, and under § 226.39(b)(5), a single disclosure must be provided on behalf of all such covered persons. Multiple persons are deemed to jointly acquire legal title to the loan if each acquires a partial interest in the loan pursuant to the same agreement or by otherwise acting in concert. *See* comments 39(b)(5)–1 and 39(d)(1)(ii)–1 regarding the disclosure requirements for multiple persons that jointly acquire a loan.

iii. *Affiliates.* An acquiring party that is a separate legal entity from the transferor must provide the disclosures required by this section even if the parties are affiliated entities.

3. *Exclusions.*

i. *Beneficial interest.* Section 226.39 does not apply to a party that acquires only a beneficial interest or a security interest in the loan, or to a party that assumes the credit risk without acquiring legal title to the loan. For example, an investor that acquires mortgage-backed securities, pass-through certificates, or participation interests and does not acquire legal title in the underlying mortgage loans is not covered by this section.

ii. *Loan servicers.* Pursuant to TILA Section 131(f)(2), the servicer of a mortgage loan is not the owner of the obligation for purposes of this section if the servicer holds title to the loan as a result of the assignment of the obligation to the servicer solely for the administrative convenience of the servicer in servicing the obligation.

4. *Mergers, corporate acquisitions, or reorganizations.* Disclosures are required under this section when, as a result of a merger, corporate acquisition, or reorganization, the ownership of a mortgage loan is transferred to a different legal entity.

Paragraph 39(a)(2).

1. *Mortgage transactions covered.* Section 226.39 applies to closed-end or open-end consumer credit transactions secured by the principal dwelling of a consumer.

39(b) Disclosure required.

1. *Generally.* A covered person must mail or deliver the disclosures required by this section on or before the 30th calendar day following the date of transfer, unless an exception in § 226.39(c) applies. For example, if a covered person acquires a mortgage loan on March 15, the disclosure must be mailed or delivered on or before April 14.

39(b)(1) Form of disclosure.

1. *Combining disclosures.* The disclosures under this section can be combined with other materials or disclosures, including the transfer of servicing notices required by the Real Estate Settlement Procedure Act (12 U.S.C. 2601 *et seq.*) so long as the combined disclosure satisfies the timing and other requirements of this section.

39(b)(4) Multiple transfers.

1. *Single disclosure for multiple transfers.* A mortgage loan might be acquired by a covered person and subsequently transferred to another entity that is also a covered person required to provide the disclosures under this section. In such cases, a single disclosure may be provided on behalf of both covered persons instead of providing two separate disclosures if the disclosure satisfies the timing and content requirements applicable to each covered person. For example, if a covered person acquires a loan on March 15 with the intent to assign the loan to another entity on April 30, the covered person could mail the disclosure on or before April 14 to provide the required information for both entities and indicate when the subsequent transfer is expected to occur.

2. *Estimating the date.* When a covered person provides the disclosure required by this section that also describes a subsequent transfer, the date of the subsequent transfer may be estimated when the exact date is unknown at the time the disclosure is made.

Information is unknown if it is not reasonably available to the covered person at the time the disclosure is made. The "reasonably available" standard requires that the covered person, acting in good faith, exercise due diligence in obtaining information. The covered person normally may rely on the representations of other parties in obtaining information. The covered person might make the disclosure using an estimated date even though the covered person knows that more precise information will be available in the future. For example, a covered person may provide a disclosure on March 31 stating that it acquired the loan on March 15 and that a transfer to another entity is expected to occur "on or around" April 30, even if more precise information will be available by April 14.

3. *Duty to comply.* Even though one covered person provides the disclosures for another covered person, each has a duty to ensure that disclosures related to its acquisition are accurate and provided in a timely manner unless an exception in § 226.39(c) applies.

39(b)(5) Multiple covered person.

1. *Single disclosure required.* If multiple covered persons jointly acquire the loan, a single disclosure must be provided on behalf of all covered persons instead of providing separate disclosures. *See* comment 39(a)(1)–2(ii) regarding a joint acquisition of legal title, and comment 39(d)(1)(ii)–1 regarding the disclosure requirements for multiple persons that jointly acquire a loan. If multiple covered persons jointly acquire the loan and complete the acquisition on separate dates, a single disclosure must be provided on behalf of all persons on or before the 30th day following the earliest acquisition date. For examples, if covered persons A and B enter into an agreement with the original creditor to jointly acquire the loan, and complete the acquisition on March 15 and March 25, respectively, a single disclosure must be provided on behalf of both persons on or before April 14. If the two acquisition dates are more than 30 days apart, a single disclosure must be provided on behalf of both persons on or before the 30th day following the earlier acquisition date, even though one person has not completed its acquisition. *See* comment 39(b)(4)–2 regarding use of an estimated date of transfer.

2. *Single disclosure not required.* If multiple covered persons each acquire a partial interest in the loan pursuant to separate and unrelated agreements and not jointly, each covered person has a duty to ensure that disclosures related to its acquisition are accurate and provided in a timely manner unless an exception in § 226.39(c) applies. The parties may, but are not required to, provide a single disclosure that satisfies the timing and content requirements applicable to each covered person.

3. *Timing requirements.* A single disclosure provided on behalf of multiple covered persons must satisfy the timing and content requirements applicable to each covered person unless an exception in § 226.39(c) applies.

4. *Duty to comply.* Even though one covered person provides the disclosures for another covered person, each has a duty to ensure that disclosures related to its acquisition are accurate and provided in a timely manner unless an exception in § 226.39(c) applies. *See* comments 39(c)(1)–2, 39(c)(3)–1 and 39(c)(3)–2 regarding transfers of a partial interest in the mortgage loan.

39(c) Exceptions.

Paragraph 39(c)(1).

1. *Transfer of all interest.* A covered person is not required to provide the disclosures required by this section if it sells, assigns or otherwise transfers all of its interest in the mortgage loan on or before the 30th calendar day following the date that it acquired the loan. For example, if covered person A acquires the loan on March 15 and subsequently transfers all of its interest in the loan to covered person B on April 1, person A is not required to provide the disclosures required by this section. Person B, however, must provide the disclosures required by this section unless an exception in § 226.39(c) applies.

2. *Transfer of partial interests.* A covered person that subsequently transfers a partial interest in the loan is required to provide the disclosures required by this section if the covered person retains a partial interest in the loan on the 30th calendar day after it acquired the loan, unless an exception in § 226.39(c) applies. For example, if covered person A acquires the loan on March 15 and subsequently transfers fifty percent of its interest in the loan to covered person B on April 1, person A is required to provide the disclosures under this section if it retains a partial interest in the loan on April 14. Person B in this example must also provide the disclosures required under this section unless an exception in § 226.39(c) applies. Either person A or person B could provide the disclosure on behalf of both of them if the disclosure satisfies the timing and content requirements applicable to each of them. In this example, a single disclosure for both covered persons would have to be provided on or before April 14 to satisfy the timing requirements for person A's acquisition of the loan on March 15. *See* comment 39(b)(4)–1 regarding a single disclosure for multiple transfers.

Paragraph 39(c)(2).

1. *Repurchase agreements.* The original creditor or owner of the mortgage loan might sell, assign or otherwise transfer legal title to the loan to secure temporary business financing under an agreement that obligates the original creditor or owner to repurchase the loan. The covered person that acquires the loan in connection with such a repurchase agreement is not required to provide disclosures under this section. However, if the transferor does not repurchase the mortgage loan, the acquiring party must provide the disclosures required by this section within 30 days after the date that the transaction is recognized as an acquisition on its books and records.

2. *Intermediary parties.* The exception in § 226.39(c)(2) applies regardless of whether the repurchase arrangement involves an intermediary party. For example, legal title to the loan may transfer from the original creditor to party A through party B as an intermediary. If the original creditor is obligated to repurchase the loan, neither party A nor party B is required to provide the disclosures under this section. However, if the original creditor does not repurchase the loan, party A must provide the disclosures required by this section within 30 days after the date that the transaction is recognized as an acquisition on its books and records unless another exception in § 226.39(c) applies.

Paragraph 39(c)(3).

1. *Acquisition of partial interests.* This exception applies if the covered person acquires only a partial interest in the loan, and there is no change in the agent or person authorized to receive notice of the right to rescind and resolve issues concerning the consumer's payments. If, as a result of the transfer of a partial interest in the loan, a different agent or party is authorized to receive notice of the right to rescind and resolve issues concerning the consumer's payments, the disclosures under this section must be provided.

2. *Examples.*

i. A covered person is not required to provide the disclosures under this section if it acquires a partial interest in the loan from the original creditor who remains authorized to receive the notice of the right to rescind and resolve issues concerning the consumer's payments after the transfer.

ii. The original creditor transfers fifty percent of its interest in the loan to covered person A. Person A does not provide the disclosures under this section because the exception in § 226.39(c)(3) applies. The creditor then transfers the remaining fifty percent of its interest in the loan to covered person B and does not retain any interest in the loan. Person B must provide the disclosures under this section.

iii. The original creditor transfers fifty percent of its interest in the loan to covered person A and also authorizes party X as its agent to receive notice of the right to rescind and resolve issues concerning the consumer's payments on the loan. Since there is a change in an agent or party authorized to receive notice of the right to rescind and resolve issues concerning the consumer's payments, person A is required to provide the disclosures under this section. Person A then transfers all of its interest in the loan to covered person B. Person B is not required to provide the disclosures under this section if the original creditor retains a partial interest in the loan and party X retains the same authority.

iv. The original creditor transfers all of its interest in the loan to covered person A. Person A provides the disclosures under this section and notifies the consumer that party X is authorized to receive notice of the right to rescind and resolve issues concerning the consumer's payments on the loan. Person A then transfers fifty percent of its interest in the loan to covered person B. Person B is not required to provide the disclosures under this section if person A retains a partial interest in the loan and party X retains the same authority.

39(d) Content of required disclosures.

1. *Identifying the loan.* The disclosures required by this section must identify the loan that was acquired or transferred. The

covered person has flexibility in determining what information to provide for this purpose and may use any information that would reasonably inform a consumer which loan was acquired or transferred. For example, the covered person may identify the loan by stating:

i. The address of the mortgaged property along with the account number or loan number previously disclosed to the consumer, which may appear in a truncated format;

ii. The account number alone, or other identifying number, if that number has been previously provided to the consumer, such as on a statement that the consumer receives monthly; or

iii. The date on which the credit was extended and the original amount of the loan or credit line.

Paragraph 39(d)(1).

1. *Identification of covered person.* Section 226.39(d)(1) requires a covered person to provide its name, address, and telephone number. The party identified must be the covered person who owns the mortgage loan, regardless of whether another party services the loan or is the covered person's agent. In addition to providing its name, address and telephone number, the covered person may, at its option, provide an address for receiving electronic mail or an internet Web site address, but is not required to do so.

39(d)(1)(i)

1. *Multiple transfers, single disclosure.* If a mortgage loan is acquired by a covered person and subsequently transferred to another covered person, a single disclosure may be provided on behalf of both covered persons instead of providing two separate disclosures as long as the disclosure satisfies the timing and content requirements applicable to each covered person. *See* comment 39(b)(4)–1 regarding multiple transfers. A single disclosure for multiple transfers must state the name, address, and telephone number of each covered person unless § 226.39(d)(1)(ii) applies.

39(d)(1)(ii)

1. *Multiple covered persons, single disclosure.* If multiple covered persons jointly acquire the loan, a single disclosure must be provided on behalf of all covered persons instead of providing separate disclosures. The single disclosure must provide the name, address, and telephone number of each covered person unless § 226.39(d)(1)(ii) applies and one of the covered persons has been authorized in accordance with § 226.39(d)(3) of this section to receive the consumer's notice of the right to rescind and resolve issues concerning the consumer's payments on the loan. In such cases, the information required by § 226.39(d)(1) may be provided only for that covered person.

2. *Multiple covered persons, multiple disclosures.* If multiple covered persons each acquire a partial interest in the loan in separate transactions and not jointly, each covered person must comply with the disclosure requirements of this section unless an exception in § 226.39(c) applies. *See* comment 39(a)(1)–2(ii) regarding a joint acquisition of legal title, and comment 39(b)(5)–2 regarding the disclosure requirements for multiple covered persons.

Paragraph 39(d)(3).

1. *Identifying agents.* Under § 226.39(d)(3), the covered person must provide the name, address and telephone number for the agent or other party having authority to receive the notice of the right to rescind and resolve issues concerning the consumer's payments on the loan. If multiple persons are identified under this paragraph, the disclosure shall provide the name, address and telephone number for each and indicate the extent to which the authority of each person differs. Section 226.39(d)(3) does not require that a covered person designate an agent or other party, but if the consumer cannot contact the covered person for these purposes, the disclosure must provide the name, address and telephone number for an agent or other party that can address these matters. If an agent or other party is authorized to receive the notice of the right to rescind and resolve issues concerning the consumer's payments on the loan, the disclosure can state that the consumer may contact that agent regarding any questions concerning the consumer's account without specifically mentioning rescission or payment issues. However, if multiple agents are listed on the disclosure, the disclosure shall state the extent to which the authority of each agent differs by indicating if only one of the agents is authorized to receive notice of the right to rescind, or only one of the agents is authorized to resolve issues concerning payments.

2. *Other contact information.* The covered person may also provide an agent's electronic mail address or internet Web site address, but is not required to do so.

Paragraph 39(d)(4).

1. *Where recorded.* Section 226.39(d)(4) requires the covered person to disclose where transfer of ownership of the debt to the covered person is recorded if it has been recorded in public records. Alternatively, the disclosure can state that the transfer of ownership of the debt has not been recorded in public records at the time the disclosure is provided, if that is the case, or the disclosure can state where the transfer may later be recorded. An exact address is not required and it would be sufficient, for example, to state that the transfer of ownership is recorded in the office of public land records or the recorder of deeds office for the county or local jurisdiction where the property is located.

39(e) Optional disclosures.

1. *Generally.* Section 226.39(e) provides that covered persons may, at their option, include additional information about the mortgage transaction that they consider relevant or helpful to consumers. For example, the covered person may choose to inform consumers that the location where they should send mortgage payments has not changed. *See* comment 39(b)(1)–1 regarding combined disclosures.

By order of the Board of Governors of the Federal Reserve System, August 13, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–20664 Filed 9–23–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Docket No. R–1392]

RIN No. AD 7100–AD54

Regulation Z; Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Board is publishing for comment a proposed rule to amend Regulation Z, which implements the Truth in Lending Act (TILA). The proposed rule would implement Section 1461 of the recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 1461 amends TILA to provide a separate, higher threshold for determining coverage of the Board's escrow requirement applicable to higher-priced mortgage loans, for loans that exceed the maximum principal balance eligible for sale to Freddie Mac.

DATES: Comments on this proposed rule must be received on or before October 25, 2010.

ADDRESSES: You may submit comments, identified by Docket No. R–1392 and RIN No. AD 7100–AD54, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Address to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Paul Mondor, Senior Attorney, or Kathleen C. Ryan, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

A. TILA and Regulation Z

Congress enacted the Truth in Lending Act (TILA) based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. One of the purposes of TILA is to provide meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and avoid the uninformed use of credit.

TILA's disclosures differ depending on whether credit is an open-end (revolving) plan or a closed-end (installment) loan. TILA also contains procedural and substantive protections for consumers. TILA is implemented by the Board's Regulation Z. An Official Staff Commentary interprets the requirements of Regulation Z. By statute, creditors that follow in good faith Board or official staff interpretations are insulated from civil liability, criminal penalties, and administrative sanction.

In 1994, Congress amended TILA by enacting the Home Ownership and Equity Protection Act (HOEPA). The HOEPA amendments created special substantive protections for consumers obtaining mortgage loans with annual percentage rates (APRs) or total points and fees exceeding prescribed thresholds. The Board adopted final rules implementing the HOEPA amendments to TILA in 1995. 60 FR 15463, Mar. 24, 1995. In addition, TILA Section 129(l)(2)(A), as added by HOEPA, directed the Board to adopt regulations prohibiting acts and practices the Board finds to be unfair and deceptive in connection with mortgage loans. 15 U.S.C. 1639(l)(2)(A).

B. 2008 HOEPA Final Rule

In July of 2008, the Board adopted final rules under the Board's authority pursuant to TILA Section 129(l)(2)(A) to prohibit unfair and deceptive acts and practices in connection with mortgage loans. 73 FR 44522, July 30, 2008 (2008 HOEPA Final Rule). The 2008 HOEPA Final Rule defined a class of "higher-priced mortgage loans" and prohibited certain unfair or deceptive lending and servicing practices in connection with such transactions. The Board also approved revisions to advertising rules for both closed-end and open-end home-secured loans to ensure that advertisements contain accurate and balanced information and do not contain misleading or deceptive representations. Finally, the 2008 HOEPA Final Rule required creditors to provide consumers with transaction-specific disclosures early enough to use while shopping for a mortgage.

Under the 2008 HOEPA Final Rule, a higher-priced mortgage loan is a consumer credit transaction secured by the consumer's principal dwelling with an APR that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points for loans secured by a first lien on a dwelling, or by 3.5 or more percentage points for loans secured by a subordinate lien on a dwelling. See § 226.35(a)(1). For such loans, the Board prohibited creditors from extending credit based on the value of the consumer's collateral without regard to the consumer's ability to repay the obligation. *See* § 226.35(b)(1). The Board also placed restrictions on the inclusion of prepayment penalty provisions in higher-priced mortgage loans. See § 226.35(b)(2). Finally, the Board prohibited extending a higher-priced mortgage loan secured by a first lien unless an escrow account is established before consummation for payment of property taxes and premiums for mortgage-related insurance required by the creditor. *See* § 226.35(b)(3).

C. The Reform Act

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Reform Act) was signed into law.[1] Section 1461 of the Reform Act creates TILA Section 129D.[2] TILA Section 129D substantially codifies the requirement that escrow accounts for taxes and insurance be established for first-lien higher-priced mortgage loans, adopted by the Board as part of the 2008 HOEPA Final Rule. As discussed above, the 2008 HOEPA Final Rule imposed the escrow requirement on first-lien transactions having an APR that exceeds the average prime offer rate for a comparable transaction by 1.5 or more percentage points. The Reform Act

[1] Public Law 111–203, 124 Stat. 1376.

[2] Public Law 111–203, § 1461, 124 Stat. 1376, 2178–81 (to be codified at 15 U.S.C. 1639D).

incorporates this coverage test in new TILA Section 129D, but only for loans that do not exceed the current, maximum original principal obligation for mortgages eligible for purchase by Freddie Mac. TILA Section 129D(b)(3)(A) (to be codified at 15 U.S.C. 1639D(b)(3)(A)).

For loans that exceed the Freddie Mac maximum principal balance, TILA Section 129D provides that the escrow requirement applies only if the APR exceeds the applicable average prime offer rate by 2.5 or more percentage points. TILA Section 129D(b)(3)(B) (to be codified at 15 U.S.C. 1639D(b)(3)(B)). The current maximum principal balance for a mortgage loan to be eligible for purchase by Freddie Mac (or Fannie Mae, which uses the same loan-size limit), assuming a single-family property that is not located in any of various designated "high-cost" areas, is $417,000.[3] Thus, for example, under TILA Section 129D(b)(3), if a single-family mortgage loan's original principal balance is $415,000, the determination of whether it is subject to the escrow requirement in § 226.35(b)(3) is made using a threshold of 1.5 percentage points over the average prime offer rate; if the principal balance is $420,000, on the other hand, the determination is made using a threshold of 2.5 percentage points over the average prime offer rate. Loans that are not eligible for purchase by Freddie Mac or Fannie Mae because their loan sizes are too great are widely referred to in the mortgage market as "jumbo" mortgages. Hence, the term "jumbo" is used in this proposed rule to refer to such loans.

II. Summary of the Proposed Rule

In the 2008 HOEPA Final Rule, the Board defined a class of higher-priced mortgage loans and applied special consumer protections to those loans. One of these protections is a requirement to establish an escrow account for first-lien higher-priced mortgage loans. Higher-priced mortgage loans are loans for which the APR exceeds the "average prime offer rate" for a comparable transaction as of the date the loan's interest rate is set, by 1.50 percentage points for first-lien loans and 3.50 percentage points for subordinate-lien loans.

This proposed rule would implement TILA Section 129D(b)(3)(B), as enacted by Section 1461 of the Reform Act, discussed above. Section 129D(b)(3)(B) provides a different, higher threshold for the escrow requirement for first-lien, "jumbo" loans. For such loans, under this proposal, escrows would be mandatory if the loan's APR exceeds the average prime offer rate for a comparable transaction as of the date the loan's interest rate is set by 2.5 or more percentage points. The Reform Act makes several other changes to TILA, including the escrow requirement, that would not be implemented by this proposed rule. The Board expects to propose rules to implement the other TILA provisions in the Reform Act at a later date.

III. Section-by-Section Analysis

Section 226.35 Prohibited Acts or Practices in Connection With Higher-Priced Mortgage Loans

35(a) Higher-Priced Mortgage Loans

35(a)(1)

As discussed below, the Board is proposing to revise § 226.35(b)(3) to provide a higher threshold for determining whether escrow accounts must be established for certain closed-end mortgage loans secured by a first lien on a consumer's principal dwelling, pursuant to the Reform Act. Under the proposed provision, the threshold for coverage of the escrow requirement for such loans would be 2.5 percentage points, rather than the 1.5 percentage points stated in § 226.35(a)(1), in excess of the average prime offer rate. The Board is proposing a conforming amendment to § 226.35(a)(1) to reflect this exception to the general coverage test for higher-priced mortgage loans.

35(b) Rules for Higher-Priced Mortgage Loans

35(b)(3) Escrows

35(b)(3)(v) "Jumbo" Loans

The Board is proposing a new § 226.35(b)(3)(v) to implement TILA Section 129D(b)(3)(B), as enacted by Section 1461 of the Reform Act, discussed above. Proposed § 226.35(b)(3)(v) provides a higher threshold for determining whether escrow accounts must be established for certain closed-end mortgage loans secured by a first lien on a consumer's principal dwelling. Currently, under § 226.35(a)(1), a first-lien loan is considered a higher-priced mortgage loan and is subject to the escrow requirement if its APR exceeds the average prime offer rate by 1.5 or more percentage points. Pursuant to TILA Section 129D(b)(3)(B), for a closed-end, first-lien loan whose original principal amount exceeds the current maximum loan balance for loans eligible for sale to Freddie Mac as of the date the transaction's rate is set, the applicable threshold is 2.5, rather than 1.5, percentage points.

Accordingly, proposed § 226.35(b)(3)(v) would provide that for such "jumbo" loans the applicable threshold under § 226.35(a)(1) is 2.5 or more percentage points greater than the average prime offer rate. Proposed staff comment 35(b)(3)(v)–1 would clarify that this higher threshold applies solely to whether a "jumbo" loan is subject to the escrow requirement. The determination of whether "jumbo" loans are subject to the other protections in § 226.35, such as the ability to repay requirements under § 226.35(b)(1) and the restrictions on prepayment penalties under § 226.35(b)(2), would continue to be based on the 1.5 percentage point threshold.

The Board is proposing this amendment to § 226.35(b)(3) pursuant to its authority under TILA Section 105(a) to prescribe regulations to carry out the purposes of TILA. 15 U.S.C. 1604(a). Section 105(a) authorizes the Board to implement TILA's statutory provisions through regulations. New TILA Section 129D is such a statutory provision.

IV. Effective Date of Final Rule

The Board is proposing this change in the escrow requirement's coverage threshold to implement the statutory amendment made by the Reform Act, as discussed above. The amendment relieves mortgage creditors of compliance with the escrow requirement for certain "jumbo" loans. Allowing creditors to use the new coverage threshold immediately upon publication of the final rule would expedite the regulatory relief that Congress intended. On the other hand, creditors will require some time to adapt their systems and procedures to take advantage of the higher threshold. The Board is aware that, when relief is granted from Regulation Z's escrow requirement, in some states the affected loans may become subject to state laws that prohibit mandatory escrow accounts, and creditors may need time to make the system changes necessary to comply with state or local law. The Board therefore solicits comment on the appropriate implementation period for a final rule adopting this proposal. The Board expects to issue a final rule within a short time after considering the public comments. Thus, the Board seeks comment on whether a final rule that is effective immediately upon publication would afford creditors sufficient time to implement the change in their systems and procedures. If not, what amount of additional time would be appropriate?

[3] *See http://www.freddiemac.com/sell/selbultn/limit.htm.*

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The rule contains no collections of information under the PRA. *See* 44 U.S.C. 3502(3). Accordingly, there is no paperwork burden associated with the rule.

VI. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603(a), the Board is publishing an initial regulatory flexibility analysis for the proposed amendments to Regulation Z. The RFA requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Under regulations issued by the Small Business Administration, an entity is considered "small" if it has $175 million or less in assets for banks and other depository institutions; and $7 million or less in revenues for non-bank mortgage lenders.[4]

Based on its analysis and for the reasons stated below, the Board believes that this proposed rule would not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing an initial regulatory flexibility analysis and requesting public comment in the following areas. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period if the Board determines that the rule will have a significant economic impact on a substantial number of small entities.

A. Reasons for the Proposed Rule

Congress enacted TILA based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. Congress enacted HOEPA in 1994 as an amendment to TILA. TILA is implemented by the Board's Regulation Z. HOEPA imposed additional substantive protections on certain high-cost mortgage transactions. HOEPA also charged the Board with prohibiting acts or practices in connection with mortgage loans that are unfair, deceptive, or designed to evade the purposes of HOEPA, and acts or practices in connection with refinancing of mortgage loans that are associated with abusive lending or are otherwise not in the interest of borrowers. As noted above, the Board adopted the 2008 HOEPA Final Rule pursuant to this mandate.

The Reform Act amended TILA to include the higher threshold for coverage of the escrow requirement, as discussed above. This proposed rule would implement that change by amending Regulation Z. These amendments are proposed in furtherance of the Board's responsibility to prescribe regulations to carry out the purposes of TILA.

B. Statement of Objectives and Legal Basis

The SUPPLEMENTARY INFORMATION contains this information. In summary, the proposed amendments to Regulation Z are designed to implement the amendment to the coverage test for the escrow requirement enacted by Congress as part of the Reform Act. The legal basis for the proposed rule is in Section 105(a) of TILA. 15 U.S.C. 1604(a).

C. Description and Estimate of Small Entities to Which the Proposed Rule Would Apply

The proposed rule would apply to all institutions and entities that engage in closed-end lending secured by a consumer's principal dwelling. TILA and Regulation Z have broad applicability to individuals and businesses that originate even small numbers of home-secured loans. *See* § 226.1(c)(1). Using data from Reports of Condition and Income (Call Reports) of depository institutions and certain subsidiaries of banks and bank holding companies and data reported under the Home Mortgage Disclosure Act (HMDA), the Board can estimate the approximate number of small entities that would be subject to the rules. For the majority of HMDA respondents that are not depository institutions, however, exact revenue information is not available.

Based on the best information available, the Board makes the following estimate of small entities that would be affected by this proposed rule: According to March 2010 Call Report data, approximately 8,848 small depository institutions would be subject to the rule. Approximately 15,899 depository institutions in the United States filed Call Report data, approximately 11,218 of which had total domestic assets of $175 million or less and thus were considered small entities for purposes of the RFA. Of the 3,898 banks, 523 thrifts, 6,727 credit unions, and 70 branches of foreign banks that filed Call Report data and were considered small entities, 3,776 banks, 496 thrifts, 4,573 credit unions, and 3 branches of foreign banks, totaling 8,848 institutions, extended mortgage credit. For purposes of this Call Report analysis, thrifts include savings banks, savings and loan entities, co-operative banks and industrial banks. Further, 1,507 non-depository institutions (independent mortgage companies, subsidiaries of a depository institution, or affiliates of a bank holding company) filed HMDA reports in 2009 for 2008 lending activities. Based on the small volume of lending activity reported by these institutions, most are likely to be small entities.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The changes to compliance requirements that the proposed rule would make are described in part III of the SUPPLEMENTARY INFORMATION. The effect of the proposed revisions to Regulation Z on small entities is minimal because the revisions would bring about burden relief; certain mortgage loans that otherwise would be subject to the escrow account requirement in § 226.35(b)(3) would be relieved of that requirement. Some small entities would be required to modify their home-secured credit origination processes once, to implement the revised coverage test. The precise costs to small entities of updating their systems are difficult to predict. These costs will depend on a number of unknown factors, including, among other things, the specifications of the current systems used by such entities to originate mortgage loans and test them for "higher-priced mortgage loan" coverage. The Board seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small businesses.

E. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The Board has not identified any federal rules that duplicate, overlap with, or conflict with the proposed revisions to Regulation Z. The Board seeks comment on the existence of any such federal laws or regulations.

F. Discussion of Significant Alternatives

The Board believes that no alternatives to the proposed rule are available for consideration. As

[4] 13 CFR 121.201.

discussed above, the effect of the proposed rule consists primarily of burden relief, thus alternatives that might minimize the impact on small entities are unlikely to exist. Moreover, the proposed rule would implement a specific, numerical adjustment that is mandated by the statute, which limits the Board's flexibility with respect to alternatives. The Board nevertheless welcomes comments on any significant alternatives, consistent with the requirements of TILA, that would minimize the impact of the proposed rule on small entities.

List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to amend Regulation Z, 12 CFR part 226, as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), and 1639(l); Pub. L. 111–24 § 2, 123 Stat. 1734.

2. Section 226.35 is amended by revising paragraph (a)(1) and adding paragraph (b)(3)(v) to read as follows:

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

§ 226.35 Prohibited acts or practices in connection with higher-priced mortgage loans.

(a) *Higher-priced mortgage loans*—(1) For purposes of this section,► except as provided in paragraph (b)(3)(v) of this section,◄ a higher-priced mortgage loan is a consumer credit transaction secured by the consumer's principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points for loans secured by a first lien on a dwelling, or by 3.5 or more percentage points for loans secured by a subordinate lien on a dwelling.

* * * * *

(b) * * *

(3) * * *

►(v) "*Jumbo*" *loans.* For purposes of this § 226.35(b)(3), for a transaction with a principal balance at consummation that exceeds the maximum principal obligation in effect as of the date the transaction's interest rate is set for such a transaction to be eligible for purchase by Freddie Mac pursuant to Section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1454(a)(2), the coverage threshold set forth in paragraph (a)(1) of this section for loans secured by a first lien on a dwelling shall be 2.5 or more percentage points greater than the applicable average prime offer rate.◄

* * * * *

3. In Supplement I to Part 226, under *Section 226.35—Prohibited Acts or Practices in Connection With Higher-Priced Mortgage Loans, 35(b) Rules for higher-priced mortgage loans, 35(b)(3) Escrows,* add an entry for 35(b)(3)(v) "*Jumbo*" *loans* to read as follows:

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 226.35—Prohibited Acts or Practices in Connection With Higher-Priced Mortgage Loans

* * * * *

35(b) Rules for higher-priced mortgage loans.

* * * * *

35(b)(3) Escrows.

* * * * *

►*35(b)(3)(v)* "*Jumbo*" *loans.*

1. *Special threshold for* "*jumbo*" *loans.* For purposes of the escrow requirement in § 226.35(b)(3) only, the coverage threshold stated in § 226.35(a)(1) for first-lien loans (1.5 or more percentage points greater than the average prime offer rate) does not apply to a loan with a principal balance that exceeds the current maximum loan amount for loans eligible to be purchased by Freddie Mac as of the date the transaction's rate is set. Under § 226.35(b)(3)(v), for such loans ("jumbo" loans), the threshold is 2.5 or more percentage points greater than the average prime offer rate. This higher threshold applies solely to whether a "jumbo" loan is subject to the escrow requirement of § 226.35(b)(3). The determination of whether "jumbo" loans are subject to the other protections in § 226.35, such as the ability to repay requirements under § 226.35(b)(1) and the restrictions on prepayment penalties under § 226.35(b)(2), is based on the 1.5 percentage point threshold stated in § 226.35(a)(1).◄

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 13, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–20665 Filed 9–23–10; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 226

Regulation Z; Docket No. R–1366

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff commentary.

SUMMARY: The Board is publishing final rules amending Regulation Z, which implements the Truth in Lending Act and Home Ownership and Equity Protection Act. The purpose of the final rule is to protect consumers in the mortgage market from unfair or abusive lending practices that can arise from certain loan originator compensation practices, while preserving responsible lending and sustainable homeownership. The final rule prohibits payments to loan originators, which includes mortgage brokers and loan officers, based on the terms or conditions of the transaction other than the amount of credit extended. The final rule further prohibits any person other than the consumer from paying compensation to a loan originator in a transaction where the consumer pays the loan originator directly. The Board is also finalizing the rule that prohibits loan originators from steering consumers to consummate a loan not in their interest based on the fact that the loan originator will receive greater compensation for such loan. The final rules apply to closed-end transactions secured by a dwelling where the creditor receives a loan application on or after April 1, 2011.

DATES: The final rule is effective on April 1, 2011.

FOR FURTHER INFORMATION CONTACT: Catherine Henderson or Nikita M. Pastor, Attorneys; Brent Lattin or Paul Mondor, Senior Attorneys; Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3667 or (202) 452–2412; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background and Implementation of the Reform Act

A. Background: TILA and Regulation Z

Congress enacted the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.,* based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. TILA directs the Board to prescribe regulations to carry out its purposes and specifically authorizes the Board, among other things, to issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with TILA, or prevent circumvention or evasion of TILA. 15 U.S.C. 1604(a).

In 1995, the Board revised Regulation Z to implement changes to TILA made by the Home Ownership and Equity Act (HOEPA). 60 FR 15463; Mar. 24, 1995. HOEPA requires special disclosures and substantive protections for home-equity loans and refinancings with annual percentage rates (APRs) or points and fees above certain statutory thresholds. HOEPA also directs the Board to prohibit unfair and deceptive acts and practices in connection with mortgages. 15 U.S.C. 1639(l)(2).

On August 26, 2009, the Board published a proposed rule in the **Federal Register** pertaining to closed-end credit (August 2009 Closed-End Proposal). As part of that proposal, the Board proposed to prohibit certain compensation payments to loan originators, and to prohibit steering consumers to loans not in their interest because the loans would result in greater compensation for the loan originator. As stated in the **Federal Register**, this proposal was intended to protect consumers against the unfairness, deception, and abuse that can arise with certain loan origination compensation practices while preserving responsible lending and sustainable homeownership. *See* 74 FR 43232; Aug. 26, 2009. The comment period on the August 2009 Closed-End Proposal ended December 24, 2009. The Board received approximately 6000 comments in response to the proposed rule, including comments from creditors, mortgage brokers, trade associations, consumer groups, Federal agencies, state regulators, state attorneys general, individual consumers, and members of Congress. As discussed in more detail elsewhere in this **SUPPLEMENTARY INFORMATION,** the Board has considered comments received on the August 2009 Closed-End Proposal in adopting this final rule.

B. The Reform Act

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Reform Act) was enacted into law.[1] Among other provisions, Title XIV of the Reform Act amends TILA to establish certain mortgage loan origination standards. In particular, Section 1403 of the Reform Act creates new TILA Section 129B(c), which imposes restrictions on loan originator compensation and on steering by loan originators. The Board intends to implement Section 129B(c) in a future rulemaking after notice and opportunity for further public comment.

Many of the provisions in TILA Section 129B(c) are similar to the Board's proposed rules concerning loan originator compensation. However, Section 129B(c) also has some provisions not addressed by the Board's August 2009 Closed-End Proposal. Implementation of those provisions of the Reform Act will be addressed in a future rulemaking with opportunity for public comment.

The Board has decided to issue this final rule on loan originator compensation and steering, even though a subsequent rulemaking will be necessary to implement Section 129B(c). The Board believes that Congress was aware of the Board's proposal and that in enacting TILA Section 129B(c), Congress sought to codify the Board's proposed prohibitions while expanding them in some respects and making other adjustments. The Board further believes that it can best effectuate the legislative purpose of the Reform Act by finalizing its proposal relating to loan origination compensation and steering at this time. Allowing enactment of TILA Section 129B(c) to delay final action on the Board's prior regulatory proposal would have the opposite effect intended by the legislation by allowing the continuation of the practices that Congress sought to prohibit.

In issuing this final rule, the Board is relying on its authority in TILA Sections 129(l)(2)(A) and (B) to prohibit acts or practices relating to mortgage loans that are unfair and to refinancings of mortgage loans that are abusive and not in the interest of the borrower. However, this final rule is also consistent with the Reform Act for the following reasons: Section 226.36(d)(1) of the final rule is consistent with TILA Section 129B(c)(1), which prohibits payments to a mortgage loan originator that vary based on the terms of the loan, other than the amount of the credit extended. Likewise, the Board finds that § 226.36(d)(2) of the final rule is consistent with TILA Section 129B(c)(2), which allows mortgage loan originators to receive payment from a person other than the consumer (such as

[1] Public Law 111–203, 124 Stat. 1376.

a yield spread premium paid by the creditor) only if the originator does not receive any compensation directly from the consumer. TILA Section 129B(c)(2) also imposes a second restriction when an originator receives compensation from someone other than the consumer: The consumer also must not make any upfront payment to the lender for points or fees on the loan other than certain bona fide third-party charges. This restriction was not contained in the proposed rule, and therefore is not included in this final rule and will be addressed in a subsequent rulemaking.

TILA Section 129B(c)(3) directs the Board to prescribe regulations that prohibit loan originators from steering consumers to certain types of loans, and prohibits other specified practices. These provisions will be also be implemented in a subsequent rulemaking. TILA Section 129B(c)(3) does not expressly include an anti-steering provision similar to proposed § 226.36(e). Nevertheless, the Board continues to believe that the prohibition in § 226.36(e) is necessary and proper to effectuate and prevent circumvention of the prohibition contained in § 226.36(d)(1), and, as explained further below, § 226.33(e) prohibits acts and practices that are unfair, abusive, and not in the interest of the borrower. Thus, the Board is adopting proposed § 226.36(e) in the final rule with some modifications in response to the public comments.

The Board's proposed prohibitions related to mortgage originator compensation and steering applied to closed-end consumer loans secured by real property or a dwelling, but comment was solicited on whether the prohibitions also should be applied to home-equity lines of credit (HELOCs). However, the provisions of the Reform Act relating to originator compensation and steering apply to "residential mortgage loans," which include closed-end loans secured by a dwelling or real property that includes a dwelling, but exclude HELOCs extended under open-end credit plans and timeshare plans (as described in the bankruptcy code, 11 U.S.C. 101(53D)). *See* TILA Section 103(cc)(5), as enacted in Section 1401 of the Reform Act.

The Board is adopting this final rule consistent with the definition of "residential mortgage loan" in the Reform Act. Accordingly, the final rule does not apply to HELOCs or time-share transactions. It also does not apply to loans secured by real property if such property does not include a dwelling. The Board intends to evaluate these issues in connection with future rulemakings and assess whether broader coverage is appropriate or necessary.

The definition of "loan originator" used in the proposal and the final rule is consistent with the Reform Act's definition of "mortgage originators" in TILA Section 103(cc)(2). Specifically, TILA Section 103(cc)(2)(E) excludes certain persons and entities that originate loans but are also creditors that provide seller financing for properties that the originator owns. Because such persons would be "creditors" and are not loan originators using table funding, they are not covered by final rules that are applicable to loan originators.

The definition of "loan originator" in the Board's final rule is consistent with the exception in Section 1401 of the Reform Act that applies to persons and entities that perform only real estate brokerage activities. *See* TILA Section 103(cc)(2)(D).[2] This final rule only applies to parties who arrange, negotiate, or obtain an extension of mortgage credit for a consumer in return for compensation or other monetary gain. Thus, persons covered by the final rule would not be engaged only in real estate brokerage activities, and would not be covered by the statutory exception.

TILA Section 103(cc)(2)(G) contains an exception for loan servicers. The final rule only applies to extensions of consumer credit. The Board's final rule does not apply to a loan servicer when the servicer modifies an existing loan on behalf of the current owner of the loan. This final rule does not apply if a modification of an existing obligation's terms does not constitute a refinancing under § 226.20(a). The Board believes that TILA Section 103(cc)(2)(G) was intended to ensure that servicers could continue to modify existing loans on behalf of current loan holders. The Board will consider whether additional provisions are needed to implement TILA Section 103(cc)(2)(G) in a future rulemaking.

II. Consumer Protection Concerns With Loan Origination Compensation

A. HOEPA Hearings

In the summer of 2006, the Board held public hearings on consumer protection issues in the mortgage market in four cities. During the hearings, consumer advocates urged the Board to ban "yield spread premiums," payments that mortgage brokers receive from the creditor at closing for delivering a loan with an interest rate that is higher than the creditor's "buy rate." Consumer advocates asserted that yield spread premiums provide brokers an incentive to increase consumers' interest rates unnecessarily. They argued that a prohibition would align reality with consumers' perception that brokers serve consumers' best interests.

In light of the information received at the 2006 hearings and the rise in defaults that began soon after, the Board held an additional hearing in June of 2007 to explore how it could use its authority under HOEPA to prevent abusive lending practices in the subprime mortgage market while still preserving responsible lending. Although the Board did not expressly solicit comment on mortgage broker compensation in its notice of the June 2007 hearing, a number of commenters and hearing panelists raised the topic. Consumer and creditor representatives alike raised concerns about the fairness and transparency of creditors' payment of yield spread premiums to brokers. Several commenters and panelists stated that consumers are not aware of the payments creditors make to brokers, or that such payments increase consumers' interest rates. They also stated that consumers may mistakenly believe that a broker seeks to obtain the best interest rate available for consumers. Consumer groups have expressed particular concern about increased payments to brokers for delivering loans both with higher interest rates and prepayment penalties.[3] Several creditors and creditor trade associations advocated requiring brokers to disclose whether the broker represents the consumer's interests, and how and by whom the broker is compensated. Some of these commenters recommended that brokers be required to disclose their total compensation to the consumer and that creditors be prohibited from paying brokers more than the disclosed amount.

B. The Board's 2008 HOEPA Proposal

To address concerns raised through the series of HOEPA hearings, the Board's 2008 HOEPA Proposed Rule would have prohibited a creditor from paying a mortgage broker any compensation greater than the amount the consumer had previously agreed in writing that the broker would receive. 73 FR 1672, 1698–1700; Jan. 9, 2008. In

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[2] The statutory exception applies to persons or entities that are licensed or registered to engage in real estate brokerage activities in accordance with applicable State law, and who do not receive compensation from a creditor, mortgage broker, or other mortgage originator, or their agents.

[3] *See Home Equity Lending Market; Notice of Hearings, 72 FR 30380; May 31, 2007; Home Equity Lending Market; Notice of Public Hearings,* 71 FR 26513; May 5, 2006.

support of the rule, the Board explained its concerns about yield spread premiums, which are summarized below.

A yield spread premium is the present dollar value of the difference between the lowest interest rate the wholesale lender would have accepted on a particular transaction and the interest rate the broker actually obtained for the lender. This dollar amount is usually paid to the mortgage broker, though it may also be applied to reduce the consumer's upfront closing costs. The creditor's payment to the broker based on the interest rate is an alternative to the consumer paying the broker directly from the consumer's preexisting resources or out of loan proceeds. Thus, consumers potentially benefit from having an option to pay brokers for their services indirectly by accepting a higher interest rate.

The Board shares concerns, however, that creditors' payments to mortgage brokers are not transparent to consumers and are potentially unfair to them. Creditor payments to brokers based on the interest rate give brokers an incentive to provide consumers loans with higher interest rates. Large numbers of consumers are simply not aware this incentive exists. Many consumers do not know that creditors pay brokers based on the interest rate, and the current legally required disclosures seem to have only a limited effect. Some consumers may not even know that creditors pay brokers: a common broker practice of charging a small part of its compensation directly to the consumer, to be paid out of the consumer's existing resources or loan proceeds, may lead consumers incorrectly to believe that this amount is all the consumer will pay or the broker will receive. Consumers who do understand that the creditor pays the broker based on the interest rate may not fully understand the implications of the practice. They may not appreciate the full extent of the incentive the practice gives the broker to increase the rate because they do not know the dollar amount of the creditor's payment.

Moreover, consumers often wrongly believe that brokers have agreed or are required to obtain the best interest rate available. Several commenters in connection with the 2006 hearings suggested that mortgage broker marketing cultivates an image of the broker as a "trusted advisor" to the consumer. Consumers who have this perception may rely heavily on a broker's advice, and there is some evidence that such reliance is common. In a 2003 survey of older borrowers who had obtained prime or subprime refinancings, majorities of respondents with refinance loans obtained through both brokers and creditors' employees reported that they had relied "a lot" on their loan originators to find the best mortgage for them.[4] The Board's recent consumer testing also suggests that many consumers shop little for mortgages and often rely on one broker or lender because of their trust in the relationship. In addition, a common perception among consumer testing participants was that brokers and lenders have no discretion over their loan terms, and, therefore, shopping actively would likely have no effect on the terms consumers receive.

If consumers believe that brokers protect consumers' interests by shopping for the lowest rates available, consumers may be less likely to take steps to protect their interests when dealing with brokers. For example, they may be less likely to shop rates across retail and wholesale channels simultaneously to assure themselves that the broker is providing a competitive rate. They may also be less likely to shop and negotiate brokers' services, obligations, or compensation upfront, or at all. They may, for instance, be less likely to seek out brokers who will promise in writing to obtain the lowest rate available.

In response to these concerns, the 2008 HOEPA Proposed Rule would have prohibited a creditor from paying a broker more than the consumer agreed in writing to pay. Under the proposal, the consumer and mortgage broker would have had to enter into a written agreement before the broker accepted the consumer's loan application and before the consumer paid any fee in connection with the transaction (other than a fee for obtaining a credit report). The agreement also would have disclosed (i) that the consumer ultimately would bear the cost of the entire compensation even if the creditor paid part of it directly; and (ii) that a creditor's payment to a broker could influence the broker to offer the consumer loan terms or products that would not be in the consumer's interest or the most favorable the consumer could obtain.

Based on the Board's analysis of comments received on the 2008 HOEPA Proposed Rule, the results of consumer testing, and other information, the Board withdrew the proposed provisions relating to broker compensation. 73 FR 44522, 44563–65; July 30, 2008. The Board's withdrawal of those provisions was based on its concern that the proposed agreement and disclosures could confuse consumers and undermine their decision making rather than improve it. The risks of consumer confusion arose from two sources. First, an institution can act as a creditor or broker depending on the transaction. At the time the agreement and disclosures would have been required, an institution could be uncertain as to which role it ultimately would play. This could render the proposed disclosures inaccurate and misleading in some and possibly many cases. Second, the Board was concerned by the reactions of consumers who participated in one-on-one interviews about the proposed agreement and disclosures as part of the Board's consumer testing. These consumers often concluded, not necessarily correctly, that brokers are more expensive than creditors. Many also believed that brokers would serve their best interests notwithstanding the conflict resulting from the relationship between interest rates and brokers' compensation.[5] The proposed disclosures presented a significant risk of misleading consumers regarding both the relative costs of brokers and lenders, and the role of brokers in their transactions.

In withdrawing the broker compensation provisions of the 2008 HOEPA Proposed Rule, the Board stated that it would continue to explore options to address potential unfairness associated with loan originator compensation arrangements, such as yield spread premiums. The Board indicated that it would consider whether disclosures or other approaches could effectively remedy this potential unfairness without imposing unintended consequences.

In the August 2009 Closed-End proposal discussed below, the Board proposed a more substantive approach to loan originator compensation. That proposal is the basis for this final rule.

III. The Board's August 2009 Closed-End Proposal

A. Summary of August 2009 Closed-End Proposal on Loan Originator Compensation

On August 26, 2009, the Board proposed regulations under TILA

[4] *See* Kellie K. Kim-Sung & Sharon Hermanson, *Experiences of Older Refinance Mortgage Loan Borrowers: Broker- and Lender-Originated* Loans, Data Digest No. 83, 3 (AARP Public Policy Inst., Jan. 2003), *available at http://assets.aarp.org/rgcenter/post-import/dd83_loans.pdf.*

[5] For more details on the consumer testing, see the report of the Board's contractor, Macro International, Inc., *Consumer Testing of Mortgage Broker Disclosures* (July 10, 2008), *available at http://www.federalreserve.gov/newsevents/press/bcreg/20080714regzconstest.pdf.*

Section 129(l)(2), 15 U.S.C. 1639(l)(2), to prohibit certain compensation payments to loan originators and steering to protect consumers against the unfairness, deception, and abuse that can arise with certain loan origination compensation practices while preserving responsible lending and sustainable homeownership. *See* 74 FR 43232; Aug. 26, 2009.

Specifically, the Board proposed to prohibit a creditor or any other person from paying compensation to a loan originator based on the terms or conditions of the transaction, or from paying a loan originator any compensation if the consumer paid the loan originator directly. The Board solicited comment, however, on an alternative that would permit compensation based on the loan amount. Under the proposal, "loan originator" would include both mortgage brokers and employees of creditors who perform loan origination functions. In addition, the Board proposed to apply the prohibition to all mortgage loans secured by real property or a dwelling, and solicited comment on whether the prohibition should apply to HELOCs.

The Board also proposed to prohibit a loan originator from steering a consumer to a transaction that would yield the most compensation for the loan originator, unless the transaction was in the consumer's interest. To facilitate compliance with this proposed prohibition, the Board proposed a safe harbor. A loan originator would be deemed in compliance with the anti-steering prohibition if the consumer chose a transaction from a choice of loans with (1) the lowest interest rate, (2) the second lowest interest rate, and (3) the lowest settlement costs. The Board solicited comment on whether the steering prohibition would be effective in achieving its stated purpose, as well as on the feasibility and practicality of such a rule, its enforceability, and any unintended adverse effects it might have.

B. Overview of Comments Received

The Board received approximately 6,000 comment letters on the proposal from various interested parties, including approximately 1,500 form letters. Individual mortgage brokers submitted the vast majority of comments. The remaining commenters included mortgage lenders, banks, community banks, credit unions, secondary market participants, industry trade groups, consumer advocates, Federal banking agencies, members of Congress, state regulators, state attorneys general, academics, and individual consumers.

Many commenters supported the Board's proposal to protect consumers from certain loan origination compensation practices. Consumer advocates supported the expanded definition of "loan originators" to include loan officers, because employees of creditors face the same incentives as mortgage brokers. They also supported covering all closed-end transactions regardless of loan price. Many of these commenters supported the Board's proposed anti-steering rule, but expressed some reservations on the breadth of the proposed safe harbor.

In contrast, industry commenters generally opposed the proposed prohibition on loan originator compensation based on the terms or conditions of the transaction, as well as the proposed anti-steering rule. Many of these commenters expressed concerns regarding the breadth of the definition of "loan originator," and urged the Board to limit the scope of its definition to individuals. Further, these commenters urged the Board to limit the scope of the proposal to higher-priced loans because the abuses targeted by the prohibition have historically been limited to the subprime market. In addition, many community banks, credit unions, and mortgage brokers maintained that prohibiting these types of origination compensation practices would hurt small businesses and reduce competition in the mortgage market. They argued that the proposal would increase the cost of credit for consumers.

These comments are discussed in further detail below in part VI.

IV. Summary of Final Rule

The Board is issuing final rules amending Regulation Z to prohibit certain practices relating to payments made to compensate mortgage brokers and other loan originators. The goal of the amendments is to protect consumers in the mortgage market from unfair practices involving compensation paid to loan originators. The final rule prohibits a creditor or any other person from paying, directly or indirectly, compensation to a mortgage broker or any other loan originator that is based on a mortgage transaction's terms or conditions, except the amount of credit extended. The rule also prohibits any person from paying compensation to a loan originator for a particular transaction if the consumer pays the loan originator's compensation directly.

The final rule adopts the proposal that prohibits a loan originator from steering a consumer to consummate a loan that provides the loan originator with greater compensation, as compared to other transactions the loan originator offered or could have offered to the consumer, unless the loan is in the consumer's interest. The rule provides a safe harbor to facilitate compliance with the prohibition on steering. A loan originator is deemed to comply with the anti-steering prohibition if the consumer is presented with loan options that provide (1) the lowest interest rate; (2) no risky features, such as a prepayment penalty, negative amortization, or a balloon payment in the first seven years; and (3) the lowest total dollar amount for origination points or fees and discount points.

The final rule applies to loan originators, which are defined to include mortgage brokers, including mortgage broker companies that close loans in their own names in table-funded transactions, and employees of creditors that originate loans (*e.g.,* loan officers). Thus, creditors are excluded from the definition of a loan originator when they do not use table funding, whether they are a depository institution or a non-depository mortgage company, but employees of such entities are loan originators. The final rule covers all transactions secured by a dwelling, but excludes HELOCs extended under open-end credit plans and timeshare transactions. The rule requires creditors and other persons who compensate loan originators to retain records for at least two years after a mortgage transaction is consummated.

As discussed further in part VII, the Board has determined that compliance with this final rule shall become mandatory on **April 1, 2011**. Accordingly, the final rule applies to transactions for which the creditor receives an application on or after April 1, 2011. The Board believes that this date gives parties sufficient time to develop new business models, train employees, and makes system changes to implement the rule's requirements. The Board has considered whether it would be appropriate to delay the effective date of this final rule so that the rules related to mortgage loan origination standards in the Reform Act could be implemented at the same time. Although such a delay might facilitate compliance and result in some cost savings, the Board finds that the benefits to consumers of an earlier effective date for rules pertaining to loan origination compensation and steering greatly outweigh any potential savings.

V. Legal Authority

A. General Rulemaking Authority

TILA Section 105 mandates that the Board prescribe regulations to carry out the purposes of the Act. TILA also specifically authorizes the Board, among other things, to:

- Issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with the Act, or prevent circumvention or evasion. 15 U.S.C. 1604(a).
- Exempt from all or part of TILA any class of transactions if the Board determines that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. The Board must consider factors identified in the Act and publish its rationale at the time it proposes an exemption for comment. 15 U.S.C. 1604(f).

In the course of developing this final rule, the Board has considered the views of interested parties, its experience in implementing and enforcing Regulation Z, and the results obtained from testing various disclosure options in controlled consumer tests. For the reasons discussed in this notice, the Board believes this final rule is appropriate pursuant to the authority under TILA Section 105(a).

B. The Board's Authority Under TILA Section 129(l)(2)

TILA Section 129(l)(2) authorizes the Board to prohibit acts or practices in connection with:

- Mortgage loans that the Board finds to be unfair, deceptive, or designed to evade the provisions of HOEPA; and
- Refinancing of mortgage loans that the Board finds to be associated with abusive lending practices or that are otherwise not in the interest of the borrower.

15 U.S.C. 1639(l)(2). The authority granted to the Board under TILA Section 129(l)(2) is broad. It reaches mortgage loans with rates and fees that do not meet HOEPA's rate or fee trigger in TILA Section 103(aa), 15 U.S.C. 1602(aa), as well as mortgage loans not covered under that Section, such as home purchase loans. Moreover, while HOEPA's statutory restrictions apply only to creditors and only to loan terms or lending practices, TILA Section 129(l)(2) is not limited to acts or practices by creditors, nor is it limited to loan terms or lending practices. See 15 U.S.C. 1639(l)(2). It authorizes protections against unfair or deceptive practices "in connection with mortgage loans," and it authorizes protections against abusive practices "in connection with refinancing of mortgage loans." Thus, the Board's authority is not limited to regulating specific contractual terms of mortgage loan agreements; it extends to regulating loan-related practices generally, within the standards set forth in the statute.

HOEPA does not set forth a standard for what is unfair or deceptive, but the Congressional Conference Report for HOEPA indicates that, in determining whether a practice in connection with mortgage loans is unfair or deceptive, the Board should look to the standards employed for interpreting state unfair and deceptive trade practices statutes and the Federal Trade Commission Act (FTC Act), Section 5(a), 15 U.S.C. 45(a).[6]

Congress has codified standards developed by the Federal Trade Commission (FTC) for determining whether acts or practices are unfair under Section 5(a), 15 U.S.C. 45(a).[7] Under the FTC Act, an act or practice is unfair when it causes or is likely to cause substantial injury to consumers, which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. In addition, in determining whether an act or practice is unfair, the FTC is permitted to consider established public policies, but public policy considerations may not serve as the primary basis for an unfairness determination.[8]

The FTC has interpreted these standards to mean that consumer injury is the central focus of any inquiry regarding unfairness.[9] Consumer injury may be substantial if it imposes a small harm on a large number of consumers, or if it raises a significant risk of concrete harm.[10] The FTC looks to whether an act or practice is injurious in its net effects.[11] The FTC has also observed that an unfair act or practice will almost always reflect a market failure or market imperfection that prevents the forces of supply and demand from maximizing benefits and minimizing costs.[12] In evaluating unfairness, the FTC looks to whether consumers' free market decisions are unjustifiably hindered.[13]

The FTC has also adopted standards for determining whether an act or practice is deceptive (though these standards, unlike unfairness standards, have not been incorporated into the FTC Act).[14] First, there must be a representation, omission, or practice that is likely to mislead the consumer. Second, the act or practice is examined from the perspective of a consumer acting reasonably in the circumstances. Third, the representation, omission, or practice must be material, that is, it must be likely to affect the consumer's conduct or decision with regard to a product or service.[15]

Many states also have adopted statutes prohibiting unfair or deceptive acts or practices, and these statutes employ a variety of standards, many of them different from the standards currently applied under the FTC Act. A number of states follow an unfairness standard formerly used by the FTC. Under this standard, an act or practice is unfair where it offends public policy or is immoral, unethical, oppressive, or unscrupulous, and causes substantial injury to consumers.[16]

In adopting this final rule under TILA Section 129(l)(2)(A), 15 U.S.C. 1639(l)(2)(A), the Board has considered the standards currently applied to the FTC Act's prohibition against unfair or deceptive acts or practices, as well as the standards applied in similar state statutes.

VI. Section-by-Section Analysis of Final Rules for Loan Origination Compensation

A. Overview

This part VI discusses the prohibitions on certain compensation payments to loan originators and steering. To address the unfairness that arises with certain loan originator compensation practices, the final rule prohibits creditors or any other person

[6] H.R. Rep. 103–652, 162 (Aug. 1994) (Conf. Rep.).

[7] *See* 15 U.S.C. 45(n); Letter from Commissioners of the FTC to the Hon. Wendell H. Ford, Chairman, and the Hon. John C. Danforth, Ranking Minority Member, Consumer Subcomm. of the H. Comm. on Commerce, Science, and Transp. (Dec. 17, 1980).

[8] 15 U.S.C. 45(n).

[9] Statement of Basis and Purpose and Regulatory Analysis, Credit Practices Rule, 42 FR 7740, 7743; Mar. 1, 1984 (*Credit Practices Rule*).

[10] Letter from Commissioners of the FTC to the Hon. Wendell H. Ford, Chairman, and the Hon. John C. Danforth, Ranking Minority Member, Consumer Subcomm. of the H. Comm. on Commerce, Science, and Transp., n.12 (Dec. 17, 1980).

[11] *Credit Practices Rule,* 42 FR at 7744.

[12] *Id.*

[13] *Id.*

[14] Letter from James C. Miller III, Chairman, FTC to the Hon. John D. Dingell, Chairman, H. Comm. on Energy and Commerce (Oct. 14, 1983) (*Dingell Letter*).

[15] *Dingell Letter* at 1–2.

[16] *See, e.g., Kenai Chrysler Ctr., Inc.* v. *Denison,* 167 P.3d 1240, 1255 (Alaska 2007) (quoting *FTC* v. *Sperry & Hutchinson Co.,* 405 U.S. 233, 244–45 n.5 (1972)); State v. Moran, 151 N.H. 450, 452, 861 A.2d 763, 755–56 (N.H. 2004) (concurrently applying the FTC's former test and a test under which an act or practice is unfair or deceptive if "the objectionable conduct * * * attain[s] a level of rascality that would raise an eyebrow of someone inured to the rough and tumble of the world of commerce") (citation omitted); *Robinson* v. *Toyota Motor Credit Corp.,* 201 Ill. 2d 403, 417–418, 775 N.E.2d 951, 961–62 (2002) (quoting *FTC* v. *Sperry & Hutchinson Co.,* 405 U.S. 233, 244–45 n.5 (1972)).

from paying compensation to a loan originator based on the terms or conditions of the credit transaction, other than the amount of credit extended. This prohibition does not apply to payments that consumers make directly to a loan originator. However, if the loan originator receives payments directly from the consumer, the loan originator is prohibited from also receiving compensation from any other party in connection with that transaction. In addition, the final rule prohibits a loan originator from steering consumers to loans not in their interest because the loans would result in greater compensation for the loan originator. Similar to the proposed rule, the final rule provides a safe harbor to facilitate compliance with the steering prohibition, with some modifications.

As discussed in further detail below, the Board finds that these prohibitions on payments to loan originators and steering are necessary and appropriate to prevent practices that the Board deems unfair in connection with mortgage loans and that are associated with abusive lending practices or are otherwise not in the interest of the consumer in connection with refinancings. *See* TILA Section 129(l)(2), 15 U.S.C. 1639(l)(2), and the discussion of this statutory authority in part IV above.

B. Public Comment

Industry commenters and their trade groups generally, although not uniformly, opposed the proposal to prohibit loan originator compensation based on the terms or conditions of the transaction. These commenters stated that such a prohibition would hurt small businesses, especially mortgage brokers, as well as community banks and credit unions. They maintained that adopting the proposed prohibition would increase the cost of credit for all creditors and consumers. Some industry commenters also suggested alternatives such as imposing a cap on originator compensation and requiring improved disclosures. They noted that the U.S. Department of Housing and Urban Development's (HUD) recently revised the disclosures required under the Real Estate Settlement Procedures Act (RESPA), including disclosures about yield spread premiums. They stated that the RESPA rules had only recently take effect,[17] and urged the Board to wait until a determination could be made as to whether the disclosures could resolve concerns about originator compensation.

[17] *See* 73 FR 68204; Nov. 17, 2008.

However, industry commenters generally suggested that if the Board chooses to finalize the proposed prohibitions, the Board should permit payments to loan originators based on the principal loan amount. They asserted that prohibiting payments based on the loan amount would disrupt the secondary market. Industry commenters uniformly opposed expanding the proposed prohibitions to HELOCs, citing a lack of abuse in the HELOC market as the principal reason.

In contrast, consumer groups, state and Federal regulators, state attorneys general, and several members of Congress strongly supported the proposed prohibition on loan originator compensation based on the terms or conditions of the transaction. They stated that by removing reliance on loan terms or conditions to set compensation for loan originators, the rule seeks to correct the misaligned incentives that currently exist in the mortgage marketplace between loan originators and consumers. However, some of these commenters did not support allowing compensation based on the principal loan amount. They argued that permitting payments to loan originators based on the loan amount may encourage loan originators to "upsell" the loan amount and discourage others from originating small balance loans. Some commenters, especially consumer advocates, sought additional protections, such as disclosures and prohibitions on creditors paying any compensation to a loan originator unless the creditor's payment covered all fees and charges associated with the loan, not just the compensation paid to the loan originator.

Many of these commenters supported expanding the definition of "loan originator" to include both mortgage brokers and employees of creditors. They stated that overages paid to retail originators are equally harmful to consumers as compensation paid to mortgage brokers; both provide incentives for the loan originator to steer the consumer to a loan that will yield the originator the greatest amount of compensation. In addition, they urged the Board to extend the scope of the proposed prohibition to the entire mortgage market, including HELOCs, to prevent unfair compensation practices from migrating from one market segment to another.

In response to the proposed prohibition on steering, consumer advocates, other Federal banking agencies, members of Congress, state regulators, and state attorneys general expressed support overall. Certain consumer advocates and state officials argued, however, that the proposed safe harbor for steering substantially weakened the proposed prohibitions on compensation practices. These commenters urged the Board to replace the safe harbor with a rebuttable presumption if the transaction's terms or conditions met certain criteria, such as a competitive interest rate and no prepayment penalty.

In contrast, the vast majority of industry commenters opposed the steering prohibition. They argued that the steering prohibition and proposed safe harbor were too vague and would increase litigation risk. They suggested that, at a minimum, the Board provide a broader safe harbor for the steering prohibition to facilitate compliance and lessen litigation risk.

These comments are discussed in further detail throughout this part as applicable.

C. Unfair and Deceptive Acts and Practices Analysis

The Board proposed to use its HOEPA authority to prohibit unfair compensation practices in connection with transactions secured by real property or a dwelling. TILA Section 129(l)(2)(A), 15 U.S.C. 1639(l)(2)(A). TILA Section 129(l)(2) authorizes the Board to prohibit acts or practices in connection with mortgage loans that the Board finds to be unfair or deceptive. As discussed above in part V, in considering whether a practice is unfair or deceptive under TILA Section 129(l)(2), the Board has generally relied on the standards that have been adopted for purposes of Section 5(a) of the FTC Act, 15 U.S.C. 45(a), which also prohibits unfair and deceptive acts and practices. For purposes of the FTC Act, an act or practice is considered unfair when it causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.

As explained in further detail below, the Board finds that paying loan originators based on the terms or conditions of the loan, other than the amount of credit extended, or steering consumers to loans that are not in their interest to maximize loan originator compensation, are unfair practices. Furthermore, based on its experience with consumer testing, particularly in connection with the 2008 HOEPA Proposed Rule, the Board believes that disclosure alone is insufficient for most consumers to avoid the harm caused by this practice. Thus, the Board is adopting substantive regulations to prohibit these unfair practices substantially as proposed. This section discusses (1) the substantial injuries caused to consumers by these unfair compensation practices; (2) the reasons consumers cannot reasonably avoid these injuries; and (3) the basis for the Board concluding that the injuries are not outweighed by the countervailing benefits to consumers or competition when creditors engage in these unfair compensation practices.

Substantial Injury

When loan originators receive compensation based on a transaction's terms and conditions, they have an incentive to provide consumers loans with higher interest rates or other less favorable terms. Yield spread premiums, therefore, present a significant risk of economic injury to consumers. Currently, this injury is common because consumers typically are not aware of the practice or do not understand its implications, and thus cannot effectively limit the practice.

Creditors' payments to mortgage brokers or their own employees that originate loans (loan officers) generally are not transparent to consumers. Brokers may impose a direct fee on the consumer, which may lead consumers to believe that the direct fee is the sole source of the broker's compensation. While consumers expect the creditor to compensate its own loan officers, they do not necessarily understand that the loan originator may have the ability to increase the creditor's interest rate or include certain loan terms for the originator's own gain.

Because consumers generally do not understand the yield spread premium mechanism, they are unable to engage in effective negotiation. Instead they are more likely to rely on the loan originator's advice, and, as a result, may receive a higher rate or other unfavorable terms solely because of greater originator compensation. These consumers suffer substantial injury by incurring greater costs for mortgage credit than they would otherwise be required to pay.

Injury Not Reasonably Avoidable

Yield spread premiums create a conflict of interest between the loan originator and consumer. As noted above, many consumers are not aware of creditor payments to loan originators, especially in the case of mortgage brokers, because these arrangements lack transparency. Although consumers may reasonably expect creditors to compensate their own employees, consumers do not know how the loan officer's compensation is structured or that loan officers can increase the creditor's interest rate or offer certain loan terms to increase their own compensation. Without this understanding, consumers cannot reasonably be expected to appreciate or avoid the risk of financial harm these arrangements represent.

To guard against this practice, a consumer would have to know the lowest interest rate the creditor would have accepted, and ascertain that the offered interest rate includes a rate increase by the loan originator. Most consumers will not know the lowest rate the creditor would be willing to accept. The consumer also would need to understand the dollar amount of the yield spread premium that is generated by the rate increase to determine what portion, if any, is being applied to reduce the consumer's upfront loan charges. HUD recently adopted disclosures in Regulation X (24 CFR Part 3500), which implement RESPA and that could enhance some consumers' understanding of mortgage broker compensation. But the details of the compensation arrangements are complex and the disclosures are limited. Pursuant to Regulation X, a mortgage broker or lender shows the yield spread premium as a credit to the borrower that is applied to cover upfront costs, but also adds the amount of the yield spread premium to the total origination charges being disclosed. This disclosure would not necessarily inform the consumer that the rate has been increased by the originator and that a lower rate with a smaller origination charge may be available. In addition, the Regulation X disclosure concerning yield spread premiums would not apply to compensation paid to a loan originator that is employed by the creditor. Thus, the Regulation X disclosure, while perhaps an improvement over previous rules, is not likely by itself to prevent consumers from incurring substantial injury from the practice.

Yield spread premiums are complex and may be counter-intuitive even to well-informed consumers. Based on the Board's experience with consumer testing, the Board believes that disclosures are insufficient to overcome the gap in consumer comprehension regarding this critical aspect of the transaction. Currently, the required disclosures of originator compensation under Federal and state laws seem to have little, if any, effect on originators' incentive to provide consumers with increased interest rates or other unfavorable loan terms to increase the originators' compensation.[18] The Board's consumer testing indicated that disclosures about yield spread premiums are ineffective. Consumers in these tests did not understand yield spread premiums and how they create an incentive for loan originators to increase consumers' costs.

Consumers' lack of comprehension of yield spread premiums is compounded where the originator imposes a direct charge on the consumer. A mortgage broker may charge the consumer a direct fee for arranging the consumer's mortgage loan. This charge may lead the consumer to infer that the broker accepts the consumer-paid fee to represent the consumer's financial interests. Consumers also may reasonably believe that the fee they pay is the originator's sole compensation. This may lead reasonable consumers erroneously to believe that loan originators are working on their behalf, and are under a legal or ethical obligation to help them obtain the most favorable loan terms and conditions. Consumers may regard loan originators as "trusted advisors" or "hired experts," and consequently rely on originators' advice. Consumers who regard loan originators in this manner are far less likely to shop or negotiate to assure themselves that they are being offered competitive mortgage terms. Even for consumers who shop, the lack of transparency in originator compensation arrangements makes it unlikely that consumers will avoid yield spread premiums that unnecessarily increase the cost of their loan.

Consumers generally lack expertise in complex mortgage transactions because they engage in such mortgage transactions infrequently. Their reliance on loan originators is reasonable in light of originators' greater experience and professional training in the area, the belief that originators are working on their behalf, and the apparent ineffectiveness of disclosures to dispel that belief.

Injury Not Outweighed by Benefits to Consumers or to Competition

Yield spread premiums may benefit consumers in cases where the amount is applied to reduce consumers' upfront closing costs, including originator compensation. A creditor's increase in the interest rate (or the addition of other loan terms) may be used to generate additional income that the creditor uses to compensate the originator, in lieu of adding origination points or fees that

[18] For example, some creditors may be willing to offer a loan with a lower interest rate in return for including a prepayment penalty. A loan originator that offers a loan with a prepayment penalty may not offer the lower rate, however, resulting in a premium interest rate and the payment of a yield spread premium.

the consumer would be required to pay directly from the consumer's preexisting funds or the loan proceeds. This can benefit a consumer who lacks the resources to pay closing costs in cash, or who may have insufficient equity in the property to increase the loan amount to cover these costs.

Without a clear understanding of yield spread premiums, the majority of consumers are not equipped to police the market to ensure that yield spread premiums are in fact applied to reduce their closing costs, especially in the case of loan originator compensation. Such policing would be particularly difficult because consumers are not likely to have any basis for determining a "typical" or "reasonable" amount for originator compensation. Accordingly, the Board is amending Regulation Z to prohibit any person from basing a loan originator's compensation on the loan's terms or conditions, other than the amount of credit extended. However, the final rule still afford creditors the flexibility to structure loan pricing to preserve the potential consumer benefit of compensating an originator, or funding third-party closing costs, through the interest rate.

D. Final Rules Prohibiting Certain Payments to Loan Originators and Steering

The Board proposed in § 226.36(d)(1) to prohibit any person from compensating a loan originator, directly or indirectly, based on the terms or conditions of a loan transaction secured by real property or a dwelling. The prohibition extends to all persons, not just the creditor, to prevent evasion by structuring payments to loan originators through non-creditors, such as secondary market investors. Under the proposal, compensation based on the loan amount would be prohibited as a payment that is based on a term or condition of the loan, but comment was sought on an alternative proposal that would permit such compensation.

The proposed prohibition did not apply to consumers' direct payments to loan originators. However, where the consumer compensated the loan originator directly, proposed § 226.36(d)(2) prohibited the loan originator from also receiving compensation from the creditor or any other person. The proposal applied to all "loan originators," which included employees of the creditor in addition to mortgage brokers, and to all closed-end transactions secured by real property or a dwelling.

The Board also proposed in § 226.36(e)(1) to prohibit a loan originator from steering a consumer to consummate a loan that may not be in the consumer's interest to maximize the loan originator's compensation. Proposed §§ 226.36(e)(2) and (3) provided a safe harbor: No violation of the steering prohibition would occur if, under certain conditions, the consumer was presented with at least three loan options for each type of transaction (fixed-rate or adjustable-rate loan) in which the consumer expressed an interest. Proposed commentary provided additional guidance regarding the prohibition on steering and the safe harbor.

The Board is adopting the prohibition on originator compensation that is based on the terms or conditions of the loan, substantially as proposed. The Board is also adopting the alternative proposal that permits compensation that is based on the amount of credit extended. The Board is revising the proposed commentary to provide further clarification regarding compensation payments that do and do not violate the prohibition, including clarifications concerning the use of credit scores and similar indicators of credit risk. The Board is also adopting the final rule prohibiting steering as proposed, with modifications to the safe harbor and corresponding commentary. These provisions are discussed in further detail below.

Section 226.36 Prohibited Acts or Practices in Connection With Credit Secured by a Dwelling

Definition of "Loan Originator"

As discussed below in more detail, the Board proposed to prohibit certain payments to loan originators based on transaction terms or conditions, and also proposed to prohibit a loan originator from "steering" consumers to transactions that are not in their interest, to increase the loan originator's compensation. Accordingly, the Board proposed in § 226.36(a)(1) to define the term "loan originator" to include persons who are covered by the current definition of "mortgage broker" in § 226.36(a) and employees of the creditor who are not otherwise already considered "mortgage brokers." (Section 226.36(a) currently defines the term "mortgage broker" because a mortgage broker is subject to the prohibition on coercion of appraisers in existing § 226.36(b).) The Board further proposed to clarify under the proposed definition of "loan originator" that a creditor in a "table-funded transaction" that is not funding the transaction at consummation out of its own resources, including drawing on a bona fide warehouse line of credit or out of its deposits, is considered a "mortgage broker." No substantive change was intended other than to adopt the definition of "loan originator." The Board proposed to revise and redesignate the existing definition of "mortgage broker" under § 226.36(a) as new § 226.36(a)(2).

Public Comment. Industry commenters and their trade groups strongly opposed the proposed definition of "loan originator" in § 226.36(a) because they opposed the scope of coverage for the proposed prohibitions on compensation in § 226.36(d). They argued that the rule should not apply to compensation paid by creditors to their employees because creditors have greater capital requirements, face significant oversight and regulation, and are motivated by concern for their reputation, and, therefore, do not engage in unfair compensation practices. Independent mortgage companies and their trade groups further argued that, unlike mortgage brokers, they do not present themselves to consumers as being able to shop loans offered by different creditors, but originate loans exclusively for themselves using their own resources. These commenters argued that this distinction prevents employees of independent mortgage banking companies from engaging in the abuses targeted by the rule, and, therefore, it is unnecessary to extend the rule's prohibitions on compensation to them.

Community banks and their trade groups contended that they should be excluded from the definition of loan originator because such banks and employees have a vested interest in their communities and consumers, and therefore take more time to educate and inform consumers. They noted that they hold most of their loans in portfolio rather than selling them to the secondary market, and have not engaged in the abusive practices targeted by the rule. Similarly, a credit union trade association argued that its members should be excluded from the definition of "loan originator." This commenter stated that loan originator compensation encourages credit union employees to ensure that consumers obtain the loan best suited for them in order to maximize customer satisfaction, because credit union employees share in the profit generated by high loan volumes. Other industry commenters urged the Board to exempt managers, supervisors, and technical or administrative employees from the definition of "loan originator." These commenters said that such employees have little, if any, impact on terms or conditions of individual loans and their compensation does not rely on originated loans.

Some industry commenters urged the Board to exclude companies and other entities from the proposed definition of "loan originator" and instead adopt the definition of "loan originator" provided for by Congress in the Safe Mortgage Licensing Act (SAFE Act), which covers only natural persons and not entities. Mortgage brokers, together with some other commenters including the Small Business Administration (the SBA), argued that the proposed definition of "loan originator" in Regulation Z would be broader than the SAFE Act definition, without justification. Specifically, the mortgage brokers and the SBA argued the proposal would disproportionately affect small brokerage firms and create an unlevel playing field. They stated that large brokerage firms would be "creditors" who are not subject to the compensation restrictions, because they can and would fund loans out of their own resources, such as by drawing on bona fide warehouse lines of credit. They claimed that the proposal would force small brokerage firms who are unable to fund loans out of their own resources out of the marketplace.

Consumer advocates and state attorneys general supported the proposed definition of loan originator. They noted that, like third-party originators, employees of creditors receive compensation based on loan terms and conditions, a practice that provides incentives to direct consumers to costlier loans.

Discussion. The Board is adopting the definition of loan originator in § 226.36(a)(1) as proposed, with some clarifications. As discussed above, the final rule is aimed at abuses associated with creditors' compensation payments to loan originators for originating loans with interest rates above the creditor's minimum or "par" interest rate or other less favorable terms, such as a prepayment penalty. The final rule applies whether the creditor's payment is made to a natural person, including an employee of the creditor, or a business entity. The rule does not apply to payments received by a creditor when selling the loan to a secondary market investor. When a mortgage brokerage firm originates a loan, it is not exempt under the final rule unless it is also a creditor that funds the loan from its own resources, such as its own line of credit.

Similar to mortgage brokers, creditors' employees have significant discretion over loan pricing, and therefore are able to modify the loan's terms or conditions to increase their own compensation. Ample anecdotal evidence indicates that creditors' loan officers engage in such pricing discretion that directly harms consumers.[19] The Board believes that where loan originators have the capacity to control their own compensation based on the terms or conditions offered to consumers, the incentive to provide consumers with a higher interest rate or other less favorable terms exists. When this unfair practice occurs, it results in direct economic harm to consumers whether the loan originator is a mortgage broker or employed as a loan officer for a bank, credit union, or community bank.

The final rule also defines loan originator under § 226.36(a)(1) as covering both natural persons and mortgage broker companies, including those companies that close loans in their own names but use table funding from a third party. The final rule clarifies that a creditor that funds a transaction is excluded from the rule's definition of a loan originator.

As noted above, a mortgage broker trade group asserted that by treating mortgage broker companies that use table funding as "loan originators," small brokerage firms that do not fund their own loans would be forced out of the marketplace. This commenter argued that mortgage brokers benefit consumers by increasing competition in the mortgage market and lowering mortgage costs, and cited studies for support. One of the studies found that loans obtained through mortgage brokers were less costly to borrowers as compared to loans obtained through lenders.[20] Another study noted that mortgage brokers can simplify the loan shopping experience for consumers and enhance competition.[21] On the other hand, a consumer group cited studies showing that borrowers using mortgage brokers incurred greater costs in connection with their loans, such as fees, interest, and other closing costs.[22] This commenter also cited a study that found that broker-originated loans, as compared to loans originated by creditors' employees (loan officers), cost subprime borrowers more in interest over the life of the loan.[23] Although using a broker can help consumers shop among different lenders and so enhance competition, consumers do not benefit if they are steered by a broker to a higher cost loan to increase the broker's compensation.

The Board has considered these comments and believes the studies are not dispositive of the issues the rule seeks to address. Brokerage entities that do not fund loans out of their own resources operate as retail networks for creditors, particularly in markets where creditors might not have a direct retail presence. The brokers serve to expand the lenders' customer base by bringing loans to creditors that would not be originated by the creditors' own employees. In these cases, mortgage brokers that do not fund loans do not compete directly with creditor entities, but rather with the loan officers of such creditor entities. The final rule, as proposed, applies to mortgage brokers, as well as employees of creditors, that meet the definition of "loan originator." Moreover, as noted above, the rule is intended to address uniformly unfair compensation practices that result in consumers being given loans with less favorable terms, whether the practices involve individual brokers and loan officers or companies that operate as loan originators. The Board believes that providing exemptions for any set of loan originators would facilitate circumvention of the rule and undermine its objective. A rule that covered only natural persons and not brokerage entities would permit evasion, for example, by individual loan originators incorporating as sole proprietorships.

In addition, the Board does not believe the final rule will require small brokerage firms to go out of business.

[19] For example, the FTC's settlement with Gateway Funding, Inc. in December 2008 illustrates a case where a creditor's loan officers created "overages," although the primary legal theory concerned disparate treatment by race in the imposition of overages. The FTC's complaint and the court's final judgment and order can be found on the FTC's Web site at *http://www.ftc.gov/os/caselist/0623063/index.shtm.* The FTC has since filed a complaint alleging similar patterns of overages in violation of fair lending laws against Golden Empire Mortgage, Inc. The May 2009 complaint can be found at *http://www.ftc.gov/os/caselist/0623061/090511gemcmpt.pdf.* A similar pattern of overages was alleged in legal actions brought by the Department of Justice, which resulted in settlement agreements with Huntington Mortgage Company (1995), available at *http://www.justice.gov/crt/housing/documents/huntingtonsettle.php,* and Fleet Mortgage Corp (1996), available at *http://www.justice.gov/crt/housing/documents/fleetsettle.php.*

[20] Amany El Anshasy, Gregory Elliehausen, & Yoshiaki Shimazaki, *The Pricing of Subprime Mortgages by Mortgage Brokers and Lenders* (July 2005).

[21] Morris Kleiner & Richard Todd, *Mortgage Broker Regulations that Matter: Analyzing Earnings, Employment, and Outcomes for Consumers,* National Bureau of Economic Research Working Paper 13684 (Dec. 2007).

[22] Michael LaCour-Little, *The Pricing of Mortgages by Brokers: An Agency Problem?,* 31 Journal of Real Estate Research 235 (2009); Howell E. Jackson & Jeremy Berry, *Kickbacks or Compensation: The Case of YSPs,* 12 Stan. J. L. Bus. & Fin. 298, 353 (2007); Patricia A. McCoy, *Rethinking Disclosure in a World of Risk-Based Pricing,* 44 Harvard J. on Leg. 123 (2006).

[23] Center for Responsible Lending, *Steered Wrong: Brokers, Borrowers, and Subprime Loans* (Apr. 2008).

Creditors rely upon mortgage brokers as their retail origination network so that they can operate in a greater number of markets with less overhead expense than if they operated direct retail branches and employed loan officers. To the extent that mortgage brokers provide cost savings or other value to creditors as an origination network, the final rule does not prevent creditors from compensating these entities in a manner that reflects such value, so long as the compensation is not based on a transaction's terms or conditions. The Board has provided illustrative examples of permissible compensation for loan originators in the final rule. The final rule prohibits a particular compensation practice that the Board finds to be unfair but does not set a cap on the amount of compensation that a loan originator may receive. This may result in new business models, but the Board does not believe mortgage brokerage firms will no longer be able to compete in the marketplace unless they can continue to engage in compensation practices the Board has found to be unfair.

The Board recognizes, however, that including mortgage brokerage firms in the definition of "loan originator" will capture a significant number of small firms; such firms, on average, tend to be small (*e.g.,* 7 to 10 employees). In addition, extending the definition of "loan originator" to entities that function as mortgage brokers in particular transactions may also cover community banks and credit unions, many of which are small entities. The Board notes that these smaller entities may experience relatively higher costs to implement the final rule because the costs of compliance are fixed and these entities may not achieve similar economies of scale with a smaller loan volume. The Board recognizes the concerns of small entities, but believes for the reasons stated above that the benefits of the prohibition to consumers outweigh the associated compliance costs.

Furthermore, the definition of "loan originator" in § 226.36(a)(1) is consistent with new TILA Section 103(cc)(2), as enacted in Section 1401 of the Reform Act, which defines "mortgage originator" to include employees of a creditor, individual brokers and mortgage brokerage firms, including entities that close loans in their own names that are table funded by a third party. Consistent with Section 1401 of the Reform Act, the Board does not purport to address transactions that occur between creditors and secondary market purchasers, to which consumers are not a direct party, and appropriately does not extend the rule to compensation earned by entities on those transactions.

Existing § 226.36(a) defining mortgage broker is revised and redesignated as new § 226.36(a)(2). Comments 36(a)–1 and –2 regarding the meaning of loan originator and mortgage broker, respectively, are adopted substantially as proposed. However, comment 36(a)–1 regarding the meaning of loan originator is amended to clarify when table funding occurs. For example, a table-funded transaction does not occur if a creditor provides the funds for the transaction at consummation out of its own resources, such as by drawing on a bona fide warehouse line of credit, or out of its deposits. In addition, comment 36(a)-1 is also amended to clarify that the definition of "loan originator" does not apply to a loan servicer when the servicer modifies an existing loan on behalf of the current owner of the loan. This final rule only applies to extensions of consumer credit and does not apply if a modification of an existing obligation's terms does not constitute a refinancing under § 226.20(a).

Under existing § 226.2(a)(17)(i)(B), a person to whom the obligation is initially payable on its face generally is a "creditor." However, as noted, the definition of "loan originator" in § 226.36(a)(1) provides that if a creditor closes a loan transaction in its own name using table funding by a third party, that creditor is also deemed a "loan originator" for purposes of § 226.36. Thus, new comment 36(a)–3 clarifies that for purposes of § 226.36(d) and (e), the provisions that refer to a "creditor" excludes those creditors that are also deemed "loan originators" under § 226.36(a)(1) because they table fund the credit transaction (*i.e.,* do not provide the funds for the transaction at consummation out of their own resources). New comment 36(a)–4 clarifies that for purposes of § 226.36, managers, administrative staff, and similar individuals whose compensation is not based on whether a particular loan is originated are not loan originators.

Covered Transactions

The Board proposed to apply the prohibitions in §§ 226.36(d) and 226.36(e) to closed-end transactions secured by real property or a dwelling regardless of whether they were higher-priced loans under existing § 226.35(a). The Board requested comment on the relative costs and benefits of applying the rule to all segments of the market, whether the costs would outweigh the benefits for loans below the higher-priced threshold, and whether the prohibitions should be extended to HELOCs.

Public Comment. Many creditors and their trade associations urged the Board to limit the prohibitions in §§ 226.36(d) and (e) to higher-priced loans. They argued that unfair and abusive practices relating to loan originator compensation were historically concentrated in the higher-priced loan market. A trade association for independent mortgage banking companies also suggested that the rule protect only vulnerable consumers that have loans with risky features. In addition, most, if not all, industry commenters and their trade groups urged the Board to exclude HELOCs from the proposal's coverage. They cited a lack of evidence that unfairness is associated with loan originator compensation for open-end products.

In contrast, consumers, consumer advocacy groups, and state attorneys general supported extending the prohibitions to the entire market, including HELOCs. They stated that the conflict of interest inherent in rewarding loan originators for offering less favorable loan terms exists regardless of the loan price. They argued that excluding HELOCS or loans below the higher-priced threshold from the rules would simply result in migration of unfair compensation practices to those market segments. Consumer advocates and state attorneys general also noted that failure to cover HELOCs would encourage loan originators to originate "piggyback" HELOCs simultaneously with first-lien loans. These commenters claimed that creditors currently offer financial incentives to loan originators to originate split loan transactions to yield greater return for the creditor, and stated that excluding HELOCs from the prohibitions would allow this unfair practice to continue.

Discussion. The final rule applies to all closed-end consumer credit transactions secured by a dwelling, regardless of price or lien position. *See* §§ 226.1(c) and 226.3(a), and corresponding commentary, regarding extensions of consumer credit subject to TILA. The Board believes covering only transactions above the higher-priced threshold in § 226.35(a) would fail to protect consumers adequately. A consumer can be harmed from a loan originator delivering less favorable loan terms or conditions to maximize compensation whether the loan has an APR that falls above or below the threshold in § 226.35. The Board recognizes that the risk of harm may be lower in the prime segment of the market where consumers historically have more choices and ability to shop. However, as noted above, the Board's consumer testing showed, and anecdotal evidence demonstrates, that consumers in all segments of the market fail to appreciate the conflict of interest that can arise from originators receiving compensation based on the loan terms or conditions offered. As a result, the Board believes that consumers in all segments of the market are equally susceptible to these unfair compensation practices, and, therefore, equally benefit from the prohibition. Moreover, the Reform Act provisions on originator compensation are not limited to higher-priced mortgage loans.

As discussed above, the Board is adopting this final rule consistent with the proposal, and with the definition of "residential mortgage loan" in the Reform Act. Accordingly, consistent with TILA Section 103(cc)(5), as enacted in section 1401 of the Reform Act, the final rule excludes HELOCs that are subject to § 226.5b and timeshare plans, as described in the Bankruptcy Code, 11 U.S.C. 101(53D). It also does not apply to loans secured by real property that does not include a dwelling. The Board will reconsider these issues in connection with future rulemakings to implement the Reform Act and assess whether broader coverage is necessary, pursuant to its authority in TILA Sections 129(l)(2)(A) and 129B(e).

Section 226.36(d) currently provides that § 226.36 does not apply to HELOCs. Section 226.36(d) is redesignated as § 226.36(f) and revised to clarify that all of § 226.36 does not extend to HELOCs, and § 226.36(d) and (e) do not extend to a loan that is secured by a consumer's interest in a timeshare plan, as described in the Bankruptcy Code, 11 U.S.C. 101(53D).[24] The Board adds new comment 36–1 to clarify that the final rule on loan origination compensation practices covers closed-end consumer credit transactions secured by a dwelling or real property that includes a dwelling, including reverse mortgages that are not HELOCs, and provides a cross reference to additional restrictions set forth in § 226.36(f). In technical revisions, the heading to § 226.36 and corresponding commentary is revised to reflect the expanded scope of that section, and current comment 36–1 is redesignated as comment 36–3. Also in technical revisions, §§ 226.36(d)(1) and (e), which are discussed in detail below, are revised to apply to consumer credit transactions secured by a dwelling. In addition, § 226.1(b) is revised to reflect that the final rule broadens the scope of § 226.36 from transactions secured by the consumer's principal dwelling to all transactions secured by real property or a dwelling. Section 226.1(d)(5) is also revised to reflect the scope of § 226.36.

Payments Based on Transaction Terms and Conditions

As proposed, § 226.36(d)(1) would prohibit any person from compensating a loan originator, directly or indirectly, based on the terms or conditions of the mortgage. Under the proposal, compensation based on the loan amount would have been prohibited as a payment that is based on a term of the loan. However, the Board sought comment on an alternative that would permit compensation to be based on the amount of credit extended, which is a common practice today.

The prohibition on origination compensation in proposed § 226.36(d)(1) did not apply to consumers' direct payments to loan originators. However, under proposed § 226.36(d)(2), if the consumer compensated the loan originator directly, the originator would be prohibited from also receiving compensation from the creditor or any other person. Proposed § 226.36(d)(3) provided that for purposes of the prohibition on certain compensation practices set forth in §§ 226.36(d)(1) and (d)(2), affiliated entities would be treated as a single "person." *See* § 226.2(a)(22) defining the term "person."

The proposed commentary clarified the types of arrangements considered to be "compensation," and provided examples of compensation based on the transaction's terms or conditions such as payments based on the interest rate, and examples of permissible methods of compensation to loan originators such as payments based on loan volume. The proposed commentary also provided guidance regarding pricing flexibility that creditors would retain and the ability to adjust loan originator compensation periodically to respond to market changes. *See* comments 36(d)(1)–1 through –6.

Public Comment. Consumer advocates, associations of state regulators, state attorneys general, other Federal banking agencies, and members of Congress strongly supported the Board's proposed ban on loan originator compensation that is based on the terms or conditions of a transaction. They stated that these compensation arrangements lack transparency and are unfair and deceptive. They cited various examples of the harm caused to consumers and the economy at large by the practice of compensating loan originators based on a transaction's terms or conditions. These commenters asserted that these compensation arrangements led to significant growth of risky loans for non-prime consumers, increased mortgage costs, and the foreclosure crisis.

In contrast, industry commenters and their trade associations almost uniformly opposed prohibiting loan originator compensation based on the terms or conditions of a transaction. They argued that loan originator compensation provides consumers with the option to cover upfront costs through the interest rate, and generally makes credit more widely available. They further argued that research on the impact of loan originator compensation on consumers is inconclusive, and that existing regulations under RESPA, the SAFE Act, and the MDIA together with market competition are sufficient to protect consumers. Independent mortgage companies and their trade groups also asserted that the Board should consider adopting less restrictive rules as an alternative to the proposal. They also argued that information and views received by the Board during the public comment period should be set forth in a second proposal to permit further public comment.

A mortgage broker trade association argued that TILA does not authorize the Board to regulate private compensation arrangements between employers and employees under TILA. It further asserted that the Board did not adequately demonstrate that the proposed rule satisfied the FTC standards for unfair or deceptive acts or practices, or the rulemaking standards set forth in the Administrative Procedures Act (APA).

The SBA commented that the proposal did not provide sufficient information regarding the rule's economic impact on small entities. In addition to listing the number and type of affected entities, the SBA asserted that the Board should have provided more information about the costs of the rule for small entities. The SBA expressed concern that small entities that originate loans for creditors would be disadvantaged compared to larger entities that are able to fund their own loans, because larger entities would be treated as creditors when selling loans to secondary market investors. The SBA argued that the proposal would require smaller entities to alter their business practices and that some small entities might ultimately leave the marketplace, making it more difficult for consumers

[24] In the August 2009 Closed-End Proposal, the Board solicited comment on whether §§ 226.36(b) and (c) should apply to HELOCs. The Board will consider whether to extend §§ 226.36(b) and (c) to HELOCs when it finalizes the August 2009 Closed-End Proposal.

to obtain mortgages. The SBA also said the Board should more fully consider alternatives that would be less burdensome to small entities and reduce or eliminate the economic impact on small entities.

Discussion. The Board is adopting the prohibition on certain compensation practices under § 226.36(d) substantially as proposed, except that the final rule permits compensation based on the amount of credit extended. In addition, for clarity § 226.36(d)(1) is divided into subparts § 226.36(d)(1)(i) through (iii); no other substantive change is intended. For the reasons explained in the proposal, the Board finds that compensating loan originators based on a loan's terms or conditions, other than the amount of credit extended, is an unfair practice that causes substantial injury to consumers. The Board is taking this action pursuant to its authority under TILA Section 129(l)(2) to prohibit acts or practices in connection with mortgage loans that it finds to be unfair or deceptive.

As discussed in greater detail above under part VI.C, compensation payments based on a loan's terms or conditions create incentives for loan originators to provide consumers loans with higher interest rates or other less favorable terms, such as prepayment penalties. There is substantial evidence that compensation based on loan rate or other terms is commonplace throughout the mortgage industry, as reflected in Federal agency settlement orders, congressional hearings, studies, and public proceedings.[25] This evidence demonstrates that market forces, such as competition or liquidity, have not been adequate to prevent the harm to consumers caused by compensation payments that are based on the loan's terms or conditions. Creditors' payments to mortgage brokers or their own employees are neither transparent nor understood by consumers. Accordingly, consumers do not effectively shop or engage in negotiation, and instead often rely on the advice of loan originators. This reliance further compounds the harmful effect of these unfair compensation practices because consumers do not understand that loan originators may have the ability to increase the creditor's interest rate or include costly terms or features to increase their own compensation. The Board's consumer testing conducted in connection with the 2008 HOEPA Proposed Rule further demonstrated consumers' reliance on loan originators and misunderstanding of loan originator compensation. Consequently, these unfair compensation practices cause consumers injuries they often cannot reasonably avoid.

The Board has previously considered other less restrictive alternatives to address concerns about mortgage originator compensation. Under the 2008 HOEPA Proposed Rule, the Board published a disclosure-based approach to the problems presented by yield spread premiums. For the reasons stated in the August 2009 Closed-End Proposal, the Board determined such an approach to be ineffective in redressing the harm caused by these unfair compensation practices.

The Board recognizes that the prohibition on certain compensation practices will require entities, both small and large, to alter their business practices, develop new business models, re-train staff, and reprogram operational systems to ensure compliance with the final rule. For the reasons discussed above, the Board believes that the benefits to consumers provided by the prohibition on certain unfair compensation practices outweigh these associated costs.

Compensation based on the amount of credit extended. As noted above, the Board sought comment on an alternative proposal that would permit loan originator compensation to be based on the amount of credit extended, which is a common practice today. The Board specifically requested comment on whether prohibiting originator compensation based on the amount of credit extended to the consumer was unduly restrictive and necessary to achieve the purpose of the rule.

Consumer advocates and certain Federal banking and state regulators and elected officials opposed the alternative proposal. They argued that it would create an incentive for loan originators to steer consumers to larger loans, thereby increasing consumer risk. They stated that creditors could find another means to compensate brokers and loan officers for additional time spent originating larger loans, and suggested that lenders be permitted to set a minimum loan origination fee to encourage the origination of small loans. Industry commenters and their trade groups strongly supported the alternative and stated that payments based on loan amount do not provide harmful incentives or result in consumer injury. They asserted that a loan originator typically requires compensation in an amount equal to 1 percent of the loan amount in order to cover the costs of origination. Some mortgage industry commenters also recommended permitting originators to receive a higher percentage compensation for smaller loans to ensure that loan originators receive adequate compensation for originating such loans.

The Board is adopting the alternative as proposed with additional clarifications. Under the final rule, the amount of credit extended is deemed not to be a transaction term or condition for purposes of § 226.36(d)(1) provided the compensation payments to loan originators are based on a fixed percentage of the amount of credit extended; however, such compensation may be subject to a minimum or maximum dollar amount. The Board believes that compensation based on the amount of credit extended is less subject to manipulation by the originator than compensation based on terms such as the interest rate or prepayment penalties. For example, a consumer purchasing a home would be unlikely to

[25] *See, e.g.,* affidavits on loan originator compensation filed in Mayor and City Council of *Baltimore* v. *Wells Fargo Bank, N.A., Civil No. JFM 1:08 CV–00062,* Second Amended Complaint (2010); *Iowa* v. *Ameriquest Mortgage Co., et al., Civ. No. CE 53090,* Consent Order (2006), *available at http://www.state.ia.us/government/ag/images/pdfs/Ameriquest_CJ.pdf;* Memorandum from Senator Carl Levin and Senator Tom Coburn to Members of the Permanent Subcommittee on Investigations re: *Wall Street and the Financial Crisis: The Role of High Risk Home Loans,* Exhibit 1a of the Senate Permanent Subcommittee on Investigations Hearing on *Wall Street and the Financial Crisis: The Role of High Risk Home Loans,* 4–5 (Apr. 13, 2010), *available at http://hsgac.senate.gov/public/_files/Financial_Crisis/041310Exhibits.pdf;* Testimony of Michael C. Calhoun, Center for Responsible Lending, Before the U.S. House of Representatives Committee on Financial Services, *Perspectives on the Consumer Financial Protection Agency,* 21 (Sept. 30, 2009), *available at http://www.responsiblelending.org/mortgage-lending/policy-legislation/congress/cfpa-calhoun-testimony.pdf* ; Testimony of Patricia McCoy, Professor of Law, University of Connecticut Law School, Before the U.S. Senate Banking Committee, *Consumer Protections in Financial Services: Past Problems, Future Solutions,* 8, 10 (Mar. 3, 2009), *available at http://banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=40666635-bc76-4d59-9c25-76daf0784239;* Susan E. Woodward & Robert E. Hall, *Consumer Confusion in the Mortgage Market: Evidence of Less than a Perfectly Transparent and Competitive Market,* American Econ. Rev.: Papers and Proceedings (May 2010), *available at http://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.100.2.511;* Susan Woodward, *A Study of Closing Costs for FHA Mortgages,* HUD Office of Policy Development and Research (May 2008); Howell E. Jackson & Jeremy Berry, *Kickbacks or Compensation: The Case of Yield-Spread Premiums,* 12 Stan. J. L, Bus & Fin. 289 (2007), *available at http://www.law.harvard.edu/faculty/hjackson/pdfs/january_draft.pdf.* Most recently, in March 2010 the Department of Justice and two subsidiaries of American International Group entered into a settlement agreement under which wholesale residential mortgages lenders were responsible for broker fee disparities. The complaint is available at *http://www.justice.gov/crt/housing/documents/aigcomp.pdf,* and the consent order can be found at *http://www.justice.gov/crt/housing/documents/aigsettle.pdf.*

accept an offer for a larger loan amount. Furthermore, a loan originator's ability to steer consumers to larger loans is limited by underwriting criteria such as maximum loan-to-value (LTV) and debt-to-income (DTI) ratios. The Board notes that transaction amount is commonly used throughout the mortgage market to determine the amounts paid to other parties, such as real-estate brokers, mortgage insurers, and various third-party service providers. The Reform Act also specifically permits compensation to loan originators based on the amount of credit extended.[26] For all of the reasons discussed, the Board believes prohibiting originator compensation based on the amount of credit extended would be unduly restrictive and is unnecessary to achieve the purposes of the final rule.

In response to commenters' concerns that the proposal would provide originators with no incentive to originate small loans, the final rule explicitly permits creditors to establish minimum or maximum dollar amounts for loan originator compensation. To prevent circumvention, the commentary clarifies that the minimum or maximum amount may not vary with each credit transaction. Thus, a creditor could choose to pay a loan originator 1 percent of the amount of credit extended for each loan, but no less than $1,000 and no more than $5,000. In this case, the originator is guaranteed payment of a minimum amount for each loan, regardless of the amount of credit extended to the consumer. Using this example, the creditor would pay a loan originator $3,000 on a $300,000 loan (*i.e.,* 1 percent of the amount of credit extended), $1,000 on a $50,000 loan, and $5,000 on a $900,000 loan. However, a creditor may not pay a loan originator 1 percent of the amount of credit extended for amounts greater than $300,000, and 2 percent of the amount of credit extended for amounts that fall between $200,000 and $300,000. In addition, the Board notes that creditors are able to use other compensation methods to provide adequate compensation for smaller loans, such as basing compensation on an hourly rate, or on the number of loans originated in a given time period.

The Board proposed comment 36(d)(1)–10 to clarify that a loan originator may be paid the same fixed percentage of the amount of credit extended for all transactions, subject to a minimum or maximum dollar amount. The Board is adopting the comment, redesignated as comment 36(d)(1)–9, substantially as proposed with additional clarifications. The revisions clarify that a loan originator may be paid compensation based on a fixed percentage that does not vary with the amount of credit extended. Thus, a creditor may pay a loan originator, for example, 1 percent of the amount of credit extended for all loans the originator arranges for the creditor. However, under the final rule a creditor may not pay a loan originator a fixed percentage that varies with different levels or tiers of amounts. The Board believes that permitting compensation to vary in this manner could enable evasion of the rule. For example, some creditors might create tiers and vary the compensation for each tier so that the tiers serve as proxies for other terms or conditions of the transaction. Such a rule might also permit creditors to create tiers with minimal increments, for instance every $10,000, and increase or decrease the percentage of the loan amount paid to the loan originator with each tier. The creditor could pair loan terms, such as prepayment penalties, with some tiers and not others. In this way, a creditor might evade the rule or make enforcement of the prohibition more difficult.

Unlike compensation based on a fixed percentage of the loan amount, underwriting criteria do not serve as a meaningful constraint to the loan originator's ability to steer a consumer from one tier to another where there are minimal increments between loan tiers. It is also unlikely that a consumer would question relatively small differences in loan amounts that might move them from one tier to another tier. Moreover, if compensation could vary in relation to tiers of loan amounts, to prevent potential evasion of the rule, the Board would need to determine reasonable increments between tiers and whether the percentage paid in relation to tiers could increase, decrease, or both. Such an approach would result in an unnecessarily complex rule that would make compliance difficult. Furthermore, to the extent that paying compensation based on tiered loan amounts is meant to ensure fair compensation for some loans and prevent unreasonable compensation for others, the Board believes that permitting loan originators to be paid a minimum and/or maximum compensation amount serves the same purpose.

The meaning of the term "compensation." Some commenters were concerned that the proposed rule would prevent consumers from choosing a higher rate loan to fund amounts that are paid to the originator to cover upfront closing costs. The final rule clarifies that this is not the case. Under the final rule, a consumer may finance upfront costs, such as third-party settlement costs, by increasing or "buying up" the interest rate regardless of whether the consumer pays the loan originator directly or the creditor pays the loan originator's compensation. Thus, the final rule does not prohibit creditors or loan originators from using the interest rate to cover upfront closing costs, as long as any creditor-paid compensation retained by the originator does not vary based on the transaction's terms or conditions.

To address commenters' concerns regarding third-party charges, comment 36(d)(1)–1 is revised to clarify that for purposes of §§ 226.36(d) and (e), the term "compensation" includes amounts retained by the loan originator, but does not include amounts that the loan originator receives as payment for *bona fide* and reasonable third-party charges, such as title insurance or appraisals. Comment 36(d)(1)–1 provides further clarification for certain circumstances where amounts received by the loan originator may exceed the third-party's actual charge imposed in connection with the transaction but would not be deemed compensation for purposes of §§ 226.36(d) and (e). The Board recognizes that, in some cases, loan originators receive payment for third-party charges that may exceed the actual charge because, for example, the loan originator cannot determine with accuracy what the actual charge for the third-party service will be, and, therefore, the originator retains the difference. The difference in amount retained by the originator is not deemed compensation if the third-party charge imposed on the consumer is *bona fide* and reasonable. On the other hand, if the originator marks up the third-party charge (a practice known as "upcharging") and retains the difference between the actual charge and the marked-up charge, the amount retained is compensation for purposes of §§ 226.36(d) and (e).

Comment 36(d)(1)–1 provides the following example: Assume a loan originator charges the consumer a $400 application fee that includes $50 for a credit report and $350 for an appraisal. Assume that $50 is the amount the creditor pays for the credit report. At the time the originator imposes the application fee on the consumer, the originator does not know what the actual cost for the appraisal will be, because the originator may choose from appraisers that charge between $300 to $350 for an appraisal. Later, the cost for the appraisal is determined to be $300

[26] *See* TILA Section 129B(c)(1), as enacted in section 1403 of the Reform Act.

for this consumer's transaction. In this case, the $50 difference between the $400 application fee imposed on the consumer and the actual $350 cost for the credit report and appraisal is not deemed compensation for purposes of §§ 226.36(d) and (e), even though the $50 is retained by the loan originator. The $50 difference would be compensation, however, if the appraisers from whom the originator chooses charge fees between $250 and $300.

The commentary also states that any third-party charge the loan originator imposes on the consumer must comply with state and other applicable law to be deemed *bona fide* and reasonable. For example, if a loan originator uses an "average charge," to be deemed *bona fide* and reasonable under § 226.36, it must also comply with the provisions of HUD's Regulation X, which implements RESPA and addresses the use of "average charges." *See* 12 CFR 3500.8(b).

Comment 36(d)(1)–1 also provides further clarification regarding "amounts retained" by the loan originator that are deemed compensation for purposes of §§ 226.36(d) and (e). For example, if a loan originator imposes a "processing fee" on the consumer in connection with the transaction and retains such fee, it is deemed compensation for purposes of §§ 226.36(d) and (e), whether the originator expends the time to process the consumer's application or uses the fee for other expenses, such as overhead. The remainder of comment 36(d)(1)–1 is adopted as proposed, and clarifies that the term "compensation" includes salaries, commissions, and any financial or similar incentive that is tied to the transaction's terms or conditions, including annual or periodic bonuses, or awards of merchandise or other prizes.

The Board notes that TILA Section 129B(c)(2), as enacted by Section 1403 of the Reform Act, further restricts a loan originator's ability to receive originator compensation from a creditor or other person where a consumer makes any upfront payment to the creditor for points or fees on the loan, other than certain bona fide third-party charges. This restriction was not part of the Board's August 2009 Closed-End Proposal. The Board intends to evaluate this issue and implement this provision as part of a subsequent rulemaking after giving the public notice and opportunity to comment. *See also* § 226.36(d)(2) prohibiting loan originator compensation from dual sources, which is discussed below.

Examples of prohibited compensation. The Board is adopting comment 36(d)(1)–2 substantially as proposed to provide examples of loan originator compensation that are deemed to be based on transaction terms or conditions, such as compensation that is based on the interest rate, annual percentage rate, or the existence of a prepayment penalty. The comment is further revised to provide additional clarification, however, regarding credit scores and similar representations of risk.

As proposed, comment 36(d)(1)–2 stated that a consumer's credit score or similar representation of credit risk is *not* one of the transaction's terms and conditions. However, proposed commentary also provided that "a creditor does not necessarily avoid having based a loan originator's compensation on the interest rate or the annual percentage rate solely because the originator compensation happens to vary with the consumer's credit score as well." A few commenters sought clarification and some urged the Board explicitly to state that compensation could be based on credit scores. In contrast, some other commenters urged the Board expressly to prohibit basing compensation on the credit score or other similar factors of credit risk, such as DTI, to prevent possible circumvention of the rule.

The comment has been revised for clarification. The Board believes credit scores or similar indications of credit risk, such as DTI, are not terms or conditions of the transaction. At the same time, the Board recognizes that they can serve as proxies for a transaction's terms or conditions. For example, credit scores are often used by creditors to assess a consumer's likelihood of default on a loan. If a creditor engages in risk-based pricing, then a lower credit score would yield a higher interest rate loan to reflect the greater risk associated with extending credit to that consumer, while a higher credit score would yield a lower interest rate loan. The Board is concerned that permitting compensation to be based on credit score or other similar factors that serve as proxies for a transaction's terms or conditions would lead to circumvention of the rule. As discussed above, the Board believes that the practice of basing compensation on a transaction's term or condition leads to consumers being given loans with less favorable terms, such as a higher interest rate, which results in harm to consumers that they cannot reasonably avoid, and, therefore, constitutes an unfair practice. Accordingly, the Board believes that permitting compensation based on factors that serve as proxies for a transaction's terms or conditions would provide incentives to originators to place consumers in loans with less favorable terms, which constitutes an unfair practice. Thus, the Board is revising comment 36(d)(1)–2 to address these concerns.

Comment 36(d)(1)–2 clarifies that credit scores or similar indications of credit risk, such as DTI, are *not* terms or conditions of the loan. The comment further provides, however, that the rule prohibits compensation based on a factor that serves as a proxy for a transaction's terms or conditions and provides the following example: Assume consumer A and consumer B receive loans from the same loan originator and the same creditor. Consumer A has a credit score of 650 and is given a loan with a 7 percent interest rate, and consumer B has a credit score of 800 and is given a loan with a 6½ percent interest rate because of his or her different credit score. If the loan originator compensation varies for these transactions in whole or in part based on the credit score so that, for instance, the loan originator receives $1,500 for the loan given to consumer A and $1,000 for the loan given to consumer B, compensation would be based on a transaction's terms or conditions.

The clarification in comment 36(d)(1)–2 acknowledges that credit scores or similar indications of credit risk may, in some instances, serve as proxies for a transaction's terms or conditions, such as the interest rate. The Board believes that this clarification is necessary to prevent evasion of the rule. The Board emphasizes, however, that the final rule does not prohibit risk-based pricing. Risk-based pricing is permissible as long as the loan originator's compensation does not vary based on the transaction's terms or conditions or factors that serve as proxies for the transaction's terms or conditions.

Some industry commenters argued that originators should receive more compensation for loans to borrowers with lower credit scores or blemished credit histories, asserting that these borrowers require more time and effort of the originator. As discussed, under the final rule originators may not receive increased compensation based on credit score or credit history, where credit score and credit history serve as proxies for loan terms and conditions. The Board notes, however, that loan originators may be compensated based on the time actually spent on a transaction, as discussed under comment 36(d)–3 below.

Examples of permissible compensation. Comment 36(d)(1)–3 proposed several examples of compensation arrangements that would not be based on the transaction's terms or conditions, such as loan volume, long-term performance of an originator's loans, and time spent. Several commenters suggested, however, that the Board provide additional guidance and urged the Board to clarify that compensation could be based, for instance, on the percentage of transactions successfully originated on behalf of the creditor, file quality, and customer satisfaction.

The Board is adopting comment 36(d)(1)–3 largely as proposed, with additional examples of permissible compensation. The comment provides that a payment that is fixed in advance for each originated loan and compensation that accounts for a loan originator's fixed overhead costs are permissible compensation methods. In addition, the comment states that a creditor may pay an originator based on the percentage of loan applications that result in consummated loans and the quality of the loan originator's loan files. The comment also states that compensation based on the amount of credit extended is permissible under the rule, and provides a cross-reference to comment 36(d)(1)–9 for further discussion. The Board believes compensation based on the new examples would not provide originators with incentives that are harmful and unfair to consumers. The comment clarifies, however, that the examples provided in it are illustrative and not exhaustive, and thus a creditor may identify and use other permissible compensation methods.

Compensation that varies from one originator to another. The Board further notes creditors may compensate their own loan officers differently than mortgage brokers. For instance, to account for the fact that mortgage brokers relieve creditors of certain fixed overhead costs associated with loan originations, a creditor may pay mortgage brokers more than its own retail loan officers. For example, a creditor may pay a mortgage broker $2,000 for each loan and pay its loan officers $1,500 for each loan. Alternatively, a creditor may pay its mortgage brokers an amount equal to 2 percent of the amount of credit extended on each loan, and pay its loan officers an amount equal to 1 percent of the amount of credit extended on each loan. Likewise, a creditor may pay one loan officer more than it pays another loan officer. For example, a creditor may pay loan officer A an amount equal to 1 percent of the amount of credit extended for each loan, and loan officer B an amount equal to 1.25 percent of the amount of credit extended for each loan. This is permissible, as long as each loan originator receives compensation that is not based on the terms or conditions of the transactions he or she delivers to the creditor.

Compensation based on loan volume. The final rule does not prohibit a creditor from basing compensation on an originator's loan volume, whether by the total dollar amount of credit extended or the total number of loans originated over a given time period. These arrangements, however, might raise supervisory concerns about whether the creditor has created incentives for originators to deliver loans without proper regard for the credit risks involved. For example, depository institutions and depository institution holding companies (banking organizations) are subject to supervisory guidance that provides for incentive compensation arrangements to take into account credit and other risks in a manner that is consistent with safety and soundness practices.[27] Consistent with this guidance, banking organizations should ensure that incentive compensation arrangements not only comply with the requirements of TILA, but also do not encourage employees to take imprudent risks that are inconsistent with the safety and soundness of the organization.

Compensation based on loan type or program. Some commenters also urged the Board to permit higher compensation for certain loan types, for example, small loans, loans under special programs that assist first-time home-buyers and low- or moderate-income consumers, and loans that satisfy the creditor's obligations under the Community Reinvestment Act (CRA). As discussed above, creditors can encourage originators to make small loans as well as large loans by setting a minimum and maximum payment for each loan if they compensate loan originators a fixed percentage of the amount of credit extended. *See* comment 36(d)(1)–9. The Board believes, however, that allowing compensation to vary with loan type, such as loans eligible for consideration under the CRA, would permit unfair compensation practices to persist in loan programs offered to consumers who may be more vulnerable to such practices.

Compensation that differs based on geography. Proposed comment 36(d)(1)–4 clarified that payment of compensation to a loan originator that differed by geographical area was not prohibited under the proposal, provided that such compensation arrangements complied with other applicable laws such as the Equal Credit Opportunity Act (15 U.S.C. 1691–1691f) and Fair Housing Act (42 U.S.C. 3601–3619). One commenter noted that significant differences exist in geographic areas that can impact loan terms and conditions, such as property value or ranges of income. This commenter urged the Board expressly to provide that creditors can structure originator compensation to account for geographical differences. Other industry commenters also generally suggested that the Board permit compensation to vary based on identified market and geographical factors, in addition to other factors such as charter type and institution size.

The Board is not adopting comment 36(d)(1)–4, and is redesignating 36(d)(1)–5 through 36(d)(1)–10 accordingly. Comment 36(d)(1)–4 was intended to clarify that compensation may take account of differences in the costs of loan origination, such as rent and other overhead expenses. As discussed above, however, the Board has clarified under comment 36(d)(1)–2 that compensation paid to loan originators may account for differences in the costs of origination such as fixed overhead costs, and believes this example is sufficient to address the matter. The Board notes that any compensation arrangement must also comply with all other applicable laws, such as the Equal Credit Opportunity Act and the Fair Housing Act.

Creditors' pricing flexibility. Consumer advocates argued that the Board should only permit loan originators to receive yield spread premiums on "no-cost" loans, meaning loans for which the interest rate is high enough to eliminate all of the consumer's upfront costs including points and third party closing costs. Consumer advocates asserted that when an originator receives a yield spread premium *and* the consumer pays some or all of the other closing costs upfront, the consumer is more susceptible to being over-charged because he or she does not understand the trade-off between upfront closing costs and higher interest rates. Therefore, these commenters argued that the rule should prohibit a yield spread premium and upfront charges on the same transaction.

The Board is not adopting the recommendation to limit compensation paid to loan originators through the rate to no-cost loans. Accordingly, the Board is adopting comment 36(d)(1)–5, redesignated as comment 36(d)(1)–4, as proposed to clarify that the rule does

[27] *See Interagency Guidance on Sound Incentive Compensation Policies,* 75 FR 36395; June 25, 2010.

not affect creditors' flexibility in setting rates or other loan terms. The Board recognizes that some research has suggested that consumers who received no-cost loans paid less for their loans than consumers who received loans where they paid some upfront charges *and* a yield spread premium.[28] The Board's proposal did not restrict yield spread premiums to no-cost loans, however, and therefore the recommendation is outside the scope of the proposed rule. Provisions of the Reform Act address this issue, which will be the subject of a future rulemaking.

In addition, under the rule, creditors may adjust the loan terms it offers to consumers to finance transaction costs the consumer would otherwise be obligated to pay directly in cash or out of the loan proceeds. For example, a creditor could recoup some costs related to the loan transaction by adding an origination point to the loan terms (calculated as one percentage point of the loan amount). However, any adjustment of loan terms must not affect the amount a loan originator receives as compensation for the transaction. Thus, the final rule does not impact creditors' ability to offer a full range of interest rate and fee combinations, so long as the exchange between the loan price and transaction costs has no bearing on loan originator compensation. For example, a creditor could add a constant premium of ¼ of one percent to the interest rates on all transactions to recoup loan originator compensation. *See* comment 36(d)(1)–5.

Effect of modification of loan terms. Under the proposed rule, a loan originator's compensation could neither be increased nor decreased based on the loan terms and conditions. Accordingly, proposed comment 36(d)(1)–6 clarified that if a consumer's request for a lower rate was accepted by the creditor, the creditor would not be permitted to reduce the amount it pays to the loan originator based on the change in loan terms. Similarly, any reduction in origination points paid by the consumer would be a cost borne by the creditor.

Industry commenters opposed prohibiting creditors from reducing loan originator compensation when the loan originator offers a favorable loan term change to a consumer. They argued that unusual circumstances require flexibility, and that loan term concessions help consumers receive better loans. They further stated that fair lending laws adequately provide protection from unlawful discrimination in offering more favorable terms on a prohibited basis.

For the reasons explained in the proposal, the Board is adopting comment 36(d)(1)–6, redesignated as comment 36(d)(1)–5, as proposed. The Board believes that permitting creditors to decrease loan originator compensation because of a change in terms favorable to the consumer would result in loopholes and permit evasions of the final rule. For example, a creditor could agree to set originators' compensation at a high level generally, and then subsequently lower the compensation in selective cases based on the actual loan terms, such as when the consumer obtains another offer with a lower interest rate. This would have the same effect as increasing the originator's compensation for higher rate loans. As noted above, the Board believes such compensation practices are harmful and unfair to consumers.

Thus, under the final rule, when the creditor offers to extend a loan with specified terms and conditions (such as rate and points), the amount of the originator's compensation for that transaction is not subject to change, based on either an increase or a decrease in the consumer's loan cost or any other change in the loan terms. The Board recognizes that in some cases a creditor may be unable to offer the consumer a lower cost and more competitively-priced loan without also reducing the creditor's own origination costs. Creditors finding themselves in this situation frequently, however, will be able to adjust their pricing and compensation arrangements to be more competitive with other creditors in the market.

Periodic changes in loan originator compensation. The Board proposed comment 36(d)(1)–7 to provide guidance on how creditors may periodically revise the compensation they pay a loan originator without violating the rule. The Board is adopting the comment, redesignated as comment 36(d)(1)–6, as proposed. The revised compensation arrangement must result in payments to the loan originator that are not based on the terms or conditions of a transaction. Thus, a creditor may periodically review factors such as loan performance, loan volume, and current market conditions for originator compensation, and prospectively revise the compensation it will pay the loan originator for future transactions.

Compensation received directly from the consumer. The Board proposed comment 36(d)(1)–8 to indicate that the prohibition in § 226.36(d)(1) did not apply to transactions in which the loan originator received compensation directly from the consumer, and to clarify that in such cases no other person could pay the loan originator in connection with the particular transaction pursuant to § 226.36(d)(2). *See* § 226.36(d)(2) and corresponding commentary below discussing the prohibition on compensation from both the consumer and another source. Proposed comment 36(d)(1)–8 also provided guidance regarding what constitutes compensation received directly from the consumer.

The Board is adopting the comment, redesignated as comment 36(d)(1)–7, substantially as proposed with clarifications. Comment 36(d)(1)–7 provides that loan originator compensation may be paid directly by the consumer whether it is paid in cash or out of the loan proceeds. However, payments by the creditor to the loan originator that are derived from an increased interest rate are not considered compensation received directly from the consumer. Comment 36(d)(1)–7 further clarifies that origination points charged by a creditor are not compensation paid directly by a consumer to a loan originator whether they are paid in cash or out of loan proceeds. If a creditor pays compensation to the loan originator out of points, the loan originator may not also collect compensation directly from the consumer. To facilitate compliance, comment 36(d)(1)–7 provides a cross reference to 36(d)(1)–1, which discusses compensation.

Prohibition of Compensation From Both the Consumer and Another Source

The Board proposed § 226.36(d)(2) to provide that, if a loan originator is compensated directly by the consumer on a transaction, no other person may pay any compensation to the originator for that transaction. Direct compensation paid by a consumer to a loan originator is not limited to "origination fees," "broker fees," or similarly labeled charges. Rather, compensation for this purpose includes any payment by the consumer that is retained by the loan originator. Thus, a creditor that is a loan originator by virtue of making a table-funded transaction is subject to this prohibition if it imposes and retains any direct charge on the consumer for the transaction. *See* comment 36(d)(1)–1 for further discussion of amounts retained by a loan originator for bona fide third-

[28] *See, e.g.,* Susan E. Woodward & Robert E. Hall, *Consumer Confusion in the Mortgage Market: Evidence of Less than a Perfectly Transparent and Competitive* Market, 513–15, *American Econ. Rev.: Papers and Proceedings* (May 2010), *available at http://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.100.2.511;* Susan Woodward, *A Study of Closing Costs for FHA Mortgages,* HUD Office of Policy Development and Research (May 2008).

party charges that are and are not deemed compensation.

Industry commenters and their trade associations opposed the proposed restriction on loan originator compensation from more than one source. These commenters argued that the proposed rule would give consumers fewer options for paying closing costs, including broker compensation. Some commenters recommended permitting loan originators to receive payments from both a creditor and a consumer if the total compensation does not exceed an agreed-upon amount and is reasonable. For example, a trade association suggested that reasonable compensation would not exceed 2 percent of the loan amount, subject to minimum of $500.

On the other hand, consumer advocates and a Federal banking agency urged the Board to adopt § 226.36(d)(2) as proposed. Consumer advocates asserted that allowing loan originators to receive compensation from different sources would enable loan originators to evade the prohibition on loan originator compensation based on the terms and conditions of a transaction. Consumer advocates concurred with the rationale stated in the Board's proposal, that consumers may reasonably believe that their direct payments are the only compensation the loan originator receives. They stated that consumers generally are less able to keep track of points paid on a loan and of the total amount of originator compensation paid, when loan originators receive compensation from multiple sources.

The Board is adopting § 226.36(d)(2) as proposed with some clarifications. The Board believes this provision is necessary to ensure that the protections in § 226.36(d)(1) are effective and that loan originators do not increase a consumer's interest rate or points to increase the originator's own compensation. Allowing the originator to receive compensation directly from the consumer while also accepting payment from the creditor in the form of a yield spread premium would enable the originator to evade the prohibition in § 226.36(d)(1). An originator that increases the consumer's interest rate to generate a larger yield spread premium can apply the excess creditor payment to third-party closing costs and thereby reduce the amount of consumer funds needed to cover upfront fees. Without § 226.36(d)(2), the originator could then impose a direct fee on the consumer in the same amount, to retain the benefit of the larger yield spread premium.

For example, suppose that for a loan with a 5 percent interest rate, the originator will receive a payment of $1,000 from the creditor as compensation, and for a loan with a 6 percent interest rate, a yield spread premium of $3,000 will be generated. Under § 226.36(d)(1), the originator must apply the additional $2,000 to cover the consumer's other closing costs. Without § 226.36(d)(2), instead of reducing the consumer's total upfront payment, the originator could also impose a $2,000 origination fee directly on the consumer, essentially retaining the benefit of the larger yield spread premium.

As discussed above, consumers generally are not aware of creditor payments to originators and reasonably may believe that when they pay a loan originator directly, that amount is the only compensation the loan originator will receive. Even if a consumer were aware of such creditor payments to loan originators, the consumer could reasonably expect that making a direct payment to an originator would reduce or eliminate the need for the creditor to fund the originator's compensation through the consumer's interest rate. Because yield spread premiums are not transparent to consumers, however, consumers cannot effectively negotiate the originator's compensation. In fact, if consumers pay loan originators directly and creditors also pay originators through higher rates, consumers may be injured by unwittingly paying originators more in total compensation (directly and through the rate) than consumers believe they agreed to pay.

The Board does not believe that § 226.36(d)(2) will significantly limit consumer choice, as consumers may still use a rate increase to cover upfront closing costs that are charged by third parties, as long as loan originators receive their compensation from only one party. Section 226.36(d)(2) will, however, increase transparency for consumers by reducing the total number of loan pricing variables with which consumers must contend. The increased transparency is consistent with TILA's purpose of promoting the informed use of consumer credit.[29] *See* TILA Section 102(a), 15 U.S.C. 1601(a). Consistent with TILA Section 129B(c)(2), as enacted in section 1403 of the Reform Act, the final rule permits loan originators to receive payment from a person other than the consumer only if the originator does not also receive any compensation directly from the consumer. As noted above, TILA Section 129B(c)(2) further restricts a loan originator's ability to receive compensation from a person other than a consumer where a consumer pays upfront points or fees on the transaction, other than certain bona fide third-party charges. *See* comment 36(d)(1)–1 discussing the term "compensation." The Board intends to address this issue as part of a subsequent rulemaking after giving the public notice and opportunity to comment.

The Board is also adopting comment 36(d)(2)–1 substantially as proposed with some clarifications. Comment 36(d)(2)–1 clarifies circumstances when a person is or is not deemed to provide compensation to a loan originator in connection with a particular credit transaction. Comment 36(d)(2)–1 explains that payment of a salary or hourly wage to a loan originator does not violate the prohibition in § 226.36(d)(2) even if the loan originator also receives direct compensation from a consumer in connection with that consumer's transaction. However, the final rule also clarifies that, in this instance, if any loan originator receives compensation directly from the consumer in connection with a specific credit transaction, no other loan originator, such as the mortgage broker company or another employee of the mortgage broker company, can receive compensation from the creditor in connection with that particular credit transaction.

The Board proposed in comment 36(d)(2)–2 to clarify that yield spread premiums, even if disclosed as "credits" in accordance with HUD's Regulation X, which implements RESPA, are not considered compensation received by the loan originator directly from the consumer for purposes of this rule. Under Regulation X, a yield spread premium paid by a creditor to the loan originator may be characterized on the RESPA disclosures as a "credit" that will be applied to reduce the consumer's total settlement charges, including origination fees. A mortgage broker trade association opposed the clarification in proposed comment 36(d)(2)–2 and urged the Board to treat yield spread premiums as payments made directly from the consumer to the loan originator under Regulation Z. By contrast, as discussed above, consumer advocates and a Federal banking agency urged the Board to adopt § 226.36(d)(2) as proposed.

The Board is adopting comment 36(d)(2)–2, as proposed. If the rule were to treat yield spread premiums as payments made directly by the consumer, loan originators could accept

[29] *See, e.g.,* Susan E. Woodward, *A Study of Closing Costs for FHA Mortgages* 70–73, Urban Institute and U.S. Department of Housing and Urban Development (2008), *available at http://www.urban.org/UploadedPDF/411682_fha_mortgages.pdf.*

both a yield spread premium from the creditor as well as a payment from the consumer, which would undermine the purpose of the rule. For the reasons stated above, the Board believes that permitting compensation from different sources would enable originators to evade the prohibition on receiving compensation based on the loan terms and conditions. Comment 36(d)(2)–2 clarifies that for purposes of this final rule, payments made by creditors to loan originators are not payments made *directly* by the consumer, regardless of how they might be disclosed under HUD's Regulation X.

Affiliated Entities

The Board is adopting the definition of "affiliates" under § 226.36(d)(3), as proposed with some clarifications. Section 226.36(d)(3) clarifies that affiliates must be treated as a single "person" for purposes of § 226.36(d), and comment 36(d)(3)–1 provides a cross-reference to the definition of "affiliates" in § 226.32(b)(2). Commenters did not address this aspect of the proposed rule. The Board believes that defining the term "affiliates" as a single person for purposes of § 226.36(d) is necessary to prevent circumvention of the final rule. For example, circumvention would occur if a parent company with multiple subsidiaries could structure its business to evade the prohibition on certain compensation practices. To illustrate, the rule would be circumvented if a parent company that has two mortgage lending subsidiaries could arrange to pay a loan originator greater compensation on higher rate loans offered by subsidiary "A" than the compensation it would pay the same originator for a lower rate loan made by subsidiary "B." To address this issue, the Board treats such subsidiaries of the parent company as a single person, so that if a loan originator is able to deliver loans to both subsidiaries, they must compensate the loan originator in the same manner. Accordingly, if a loan originator delivers a loan to subsidiary "B" and the interest rate is 8 percent, the originator must receive the same compensation that would have been paid by subsidiary "A" for a loan with a rate of either 7 or 8 percent. The Board is also adopting comment 36(d)(3)–1, as proposed.

Record Retention Requirements

Currently, creditors are required by § 226.25(a) to retain evidence of compliance with Regulation Z for two years. Under the proposal, comment 25(a)–5 clarified that a creditor must retain at least two types of records to demonstrate compliance with § 226.36(d)(1): A record of the compensation agreement with the loan originator that was in effect on the date the transaction's rate was set, and a record of the actual amount of compensation it paid to a loan originator in connection with each covered transaction. The proposed comment explained that for loans involving mortgage brokers, the creditor may retain the HUD–1 settlement statement required under RESPA as a record of the actual amount of loan originator compensation paid. The Board sought comment on whether other records should be subject to the retention requirements; whether some time other than the date the transaction rate is set would be more appropriate; whether the two-year retention requirement was adequate; and the relative costs and benefits of requiring persons, other than creditors, to retain records concerning originator compensation.

Industry commenters and their trade associations opposed expanding the record retention requirements to persons other than creditors, citing cost and burden as reasons. A credit union trade association affirmed that systems currently used by credit unions to track loan originator compensation should be deemed sufficient. This commenter also stated that credit union compensation records indicating that loan originator compensation was provided in the form of salary without being directly attributable to a particular transaction should satisfy the record retention requirements.

Associations of state regulators urged the Board to require the retention of records for longer than two years. Consumer advocates recommended that the Board require retention of records by all parties making payments to loan originators for five years. They asserted that detection of violations of the rule would be unlikely within the two-year period. These commenters also noted that that the HUD–1 settlement statement is often inaccurate, and so should not be considered a record of the actual amount of loan originator compensation paid, but did not offer other alternatives.

The Board is adopting comment 25(a)–5 substantially as proposed. Accordingly, the final rule does not extend the record retention requirement to persons other than the creditor that pays loan originator compensation. At the time the Board issued this proposal and comments were submitted, TILA did not subject non-creditors to civil liability. As a result, the comments did not take into account such liability in their analysis of the costs and benefits of recordkeeping by non-creditors. On July 21, 2010, Congress enacted the Reform Act, which amended TILA to provide civil liability for loan originators.[30] The Board will request additional comment on this matter in connection with subsequent rulemakings to implement provisions of the Reform Act.

Under the final rule, any creditor who pays loan originator compensation, and, therefore, is subject to § 226.36(d), is required to retain records pursuant to § 226.25(a). The Board believes record retention requirements are necessary to ensure that the loan originator compensation rules in §§ 226.36(d) and (e) are enforceable. Comment 25(a)–5 is being revised to remove reference to the HUD–1 settlement statement which does not currently itemize loan originator compensation. Comment 25(a)–5 is also revised to provide that where a loan originator is a mortgage broker, a disclosure or agreement required by applicable state law that complies with § 226.25 is presumed to be a record of the amount actually paid to the loan originator in connection with the transaction.

The final rule does not extend the record retention requirement for origination compensation beyond two years. This is the same time period that applies for records of compliance with other provisions of Regulation Z. The Board weighed the potential benefits of a longer timeframe against the increased costs, and believes that the benefits of a longer time period do not clearly outweigh the costs. To facilitate compliance, the Board adopts proposed comment 36(d)(1)–9, redesignated as comment 36(d)(1)–8, to provide a cross-reference to the record retention requirement.

Alternatives and Exemptions Not Adopted

Disclosures. Industry commenters and their trade associations urged the Board to implement disclosure requirements to address unfair compensation practices, instead of directly prohibiting loan originator compensation based on terms or conditions of the transaction under § 226.36(d)(1). In particular, the SBA and a mortgage broker trade association recommended that the Board replace the proposed prohibition on certain compensation practices with a requirement that creditors disclose the lowest interest rate they would accept for a given loan. A Federal banking agency suggested that, in addition to prohibiting loan originator

[30] *See* TILA Section 129B(d), as enacted in Section 1404 of the Reform Act.

compensation based on the terms or conditions of a transaction, the Board develop and require uniform mortgage broker disclosures that specify the mortgage broker's role and fees. This commenter argued that such disclosures would help consumers understand the role of brokers, and would indirectly reform loan originator compensation practices.

For the reasons discussed in the proposal, the Board is not adopting disclosure requirements as an alternative to the proposed prohibitions on certain compensation practices. In connection with its proposal of a disclosure-based approach to originator compensation, the Board conducted consumer testing of the disclosures and based on the results of such testing, and other concerns, withdrew the rule in its 2008 HOEPA Final Rule. For the reasons stated therein and reiterated in its August 2009 Closed-End Proposal, the Board believed that disclosure of loan originator compensation would not address the injury to consumers. The Board was concerned that after reading the disclosures consumers often concluded, not necessarily correctly, that mortgage brokers are more expensive than creditors. Many consumers also believed that mortgage brokers would serve their best interests notwithstanding disclosure of the conflict of interest resulting from the relationship between interest rates and broker compensation.

The Board's consumer testing also suggests that few consumers shop for mortgages, and often rely on one broker or lender because of their trust in the relationship, and because they do not know that brokers and lenders have discretion over the loan terms offered. Moreover, even when originator compensation is disclosed, consumers typically do not understand its complexities or how it relates to the mechanics of loan pricing. Consumers do not understand how a creditor payment to a loan originator can result in a higher interest rate for consumers. Without that knowledge, consumers cannot take steps to protect their own interests, for example by negotiating for a smaller direct payment, a lower rate, or both.

Further, HUD and some states have required certain disclosures of mortgage broker fees for years. In spite of these disclosures, concerns continue to be raised about abuses associated with yield spread premiums and similar compensation for loan officers. For these reasons, the Board believes that disclosures are ineffective at addressing unfair originator compensation.

Caps. Some industry commenters and trade associations recommended the Board adopt a cap on loan originator compensation, for example at two percent of the loan amount, while allowing compensation to vary from transaction to transaction based on the loan's terms. The Board is not imposing a cap on the amount of loan originator compensation that can be paid in a particular transaction. Although a cap might prohibit the most egregious compensation practices, it would not adequately address the consumer injury that the final rule is designed to address. A cap would merely create an upper limit on an originator's compensation; it would not prevent a loan originator from increasing the consumer's rate or points to increase the originator's own compensation. In addition, a cap would require the Board to determine an upper limit that is appropriate for all loans. It is unclear how, or on what basis, the Board would determine the appropriate cap for all loans, and, therefore, such a cap might prove arbitrary. In some cases originators might not be fully compensated for their work, and in other cases they might receive compensation that exceeds the value of their services. Some loan originators would simply charge up to the cap in all cases. For all of these reasons, the final rule does not apply a cap to originator compensation.

Prohibition on Steering

The Board requested comment on a proposal under § 226.36(e)(1) that would prohibit loan originators from directing or "steering" consumers to loans based on the fact that the originator will receive additional compensation, when that loan may not be in the consumer's interest. The proposed rule was intended to prevent circumvention of the prohibition in § 226.36(d)(1), which could occur if the loan originator steered the consumer to a loan with a higher interest rate or higher points to increase the originator's compensation. To facilitate compliance with this anti-steering rule, the Board also proposed a safe harbor in §§ 226.36(e)(2) and (3). Under the safe harbor, a loan originator would be deemed to comply with the anti-steering rule if, under certain specified conditions, the consumer is presented with a choice of loan options that include (1) the lowest interest rate, (2) the second lowest interest rate, and (3) the lowest total dollar amount for origination points or fees and discount points. Proposed commentary provided additional guidance regarding the prohibition on steering and the safe harbor.

The Board specifically sought comment on whether the steering prohibition would be effective in achieving its stated purpose, as well as the feasibility and practicality of such a rule, its enforceability, and any unintended adverse effects the rule might have. As discussed in further detail below, the Board is adopting the anti-steering rule under § 226.36(e)(1) as proposed, with a modification to the safe harbor provided under §§ 226.36(e)(2) and (3).

Public Comment. Industry commenters and their trade associations generally asserted that the anti-steering prohibition, as well as the safe harbor, were too vague and would increase compliance costs and litigation risk. They asserted that these costs would, in turn, be passed on to consumers. Some commenters argued that the anti-steering rule would interfere with the loan originator's ability to communicate with consumers. They claimed that the prohibition would cause loan originators not to advise their consumers fully about possible loan options. These commenters urged the Board to provide a safe harbor for various disclosures instead of the anti-steering rule.[31] A credit union trade association suggested a safe harbor for consumers who know what loan type they want, and for smaller entities that may offer only one or two types of loans.

Consumer advocates, other Federal banking agencies, members of Congress, and state officials generally supported the anti-steering proposal, although some noted concerns with the safe harbor and associated record-keeping requirements. These commenters stated that the practice of steering consumers to loans with less favorable terms increases consumers' costs and risk, increases the risk to the market as a whole, and has the potential to result in illegal discrimination. For example, one commenter stated that originator compensation led to many borrowers who qualified for prime loans being steered to subprime loans. This commenter also asserted that the compensation practices addressed by the rule caused subprime borrowers to have reduced access to loans with lower interest rates and no risky features, and contributed significantly to foreclosures in minority neighborhoods.

With respect to the safe harbor, consumer advocates, state officials, and

[31] A mortgage broker trade association suggested that the Board look to a House-passed bill that preceded the Reform Act for guidance on its anti-steering rule. For the reasons discussed above, the Board's rule is consistent with the Reform Act as enacted.

a Federal banking agency expressed concern that the proposed safe harbor would undermine the effectiveness of the prohibition on certain compensation payments under § 226.36(d). These commenters stated that the safe harbor was too broad and would permit circumvention of the rule under § 226.36(d)(1). They argued that the safe harbor would create incentives for "pro forma" compliance, and weaken consumers' access to effective remedies. These commenters urged the Board to eliminate the safe harbor entirely so that compliance with the steering prohibition could be determined case-by-case, based on whether the loan originator could have offered the consumer a loan transaction with lower costs. Alternatively, they recommended that the Board replace the safe harbor with a rebuttable presumption of compliance that would only be available in those instances where the loan originator offered, and the consumer chose, a "plain vanilla loan" (*e.g.,* a loan with a rate that is fixed for at least 5 years with a competitive interest rate, points and fees equal to 2 points or less, no prepayment penalty, fully amortizing payments, and that is underwritten with full documentation of the consumer's ability to repay).

Discussion. The Board is adopting the anti-steering rule under § 226.36(e)(1) as proposed, with some clarifications to corresponding comments 36(e)(1)–1 through –3. The Board believes an anti-steering rule is appropriate and necessary to prevent the harm that results if loan originators steer consumers to a particular transaction based on the amount of compensation paid to the originator when that loan is not in the consumer's interest. In addition, the Board believes the rule is necessary to prevent circumvention of the prohibition in § 226.36(d)(1). Section 226.36(d)(1) does not prevent a loan originator from directing a consumer to transactions from a single creditor that offer greater compensation to the originator, while ignoring possible transactions having lower interest rates that are available from other creditors. Consumers generally are unaware of yield spread premiums and are unable to appreciate the incentives such compensation creates regarding the loan options a loan originator may choose to present to consumers. Unaware of these financial incentives, consumers are unable to engage in effective negotiation with loan originators. Rather, consumers are more likely to rely on a loan originator's advice regarding which loan transaction will be in their interest. Consequently, these consumers may pay more for mortgage credit than they would otherwise be required to pay. As discussed above in part VI.C, the Board finds such a practice to be unfair.

The final rule under § 226.36(e)(1) prohibits loan originators from directing or "steering" a consumer to consummate a dwelling-secured loan based on the fact that the originator will receive greater compensation from the creditor in that transaction than in other transactions the originator offered or could have offered to the consumer, unless the consummated transaction is in the consumer's interest. The rule is intended to preserve consumer choice by ensuring that consumers have loan options that reflect considerations other than the maximum amount of compensation that will be paid to the originator. Thus, originators could violate the anti-steering prohibition if, for instance, they direct a consumer to a fixed-rate loan option from a creditor that maximizes the originator's compensation without providing the consumer with an opportunity to choose from other available loans that have lower fixed interest rates with the equivalent amount in origination and discount points.

Commenters expressed concern that a prohibition on steering could negatively impact the relationship between loan originators and consumers, for example by causing loan originators not fully to advise consumers on available loan options. The Board believes, however, that the anti-steering rule is sufficiently flexible to allow the loan originator and consumer to continue to discuss and determine which terms and conditions of the loan transaction, in addition to other factors such as length of time until closing, will serve the consumer's interest. For example, comment 36(e)(1)–2(ii) makes clear that the final rule does not require a loan originator to direct a consumer to consummate the transaction that will result in the least amount of compensation being paid to the originator by the creditor. However, if the loan originator reviews possible loan offers available from a significant number of the creditors with which the originator regularly does business, and the originator directs the consumer to the transaction that will result in the least amount of creditor-paid compensation, the requirements of § 226.36(e) would be deemed to be satisfied.

Comment 36(e)(1)–2 is also revised to provide additional clarification that where a loan originator directs a consumer to a transaction that will result in a greater amount of creditor-paid compensation for the loan originator, § 226.36(e)(1) is not violated if the terms and conditions on that transaction are the same as other possible loan offers available through the originator, and for which the consumer likely qualifies. Comment 36(e)–1 is adopted as proposed to provide guidance on compensation that is subject to the anti-steering rule. Comments 36(e)(1)–1 and –3 are adopted as proposed to provide further guidance regarding what it means to "direct" or "steer" a consumer, and examples of conduct that is prohibited under the anti-steering rule, respectively.

As discussed above under the definition of a "loan originator," employees of a creditor are prohibited under § 226.36(d)(1) from receiving compensation that is based on the terms or conditions of the loan. Thus, when originating loans for the employer-creditor, the originator may not steer the consumer to a particular loan offered by the employer to increase compensation. Accordingly, in these cases, compliance with § 226.36(d)(1) is deemed to satisfy the requirements of § 226.36(e)(1). At the same time, the Board recognizes that a creditor's employee may occasionally act as a broker by forwarding a consumer's application to a creditor other than the loan originator's employer, such as when the employer does not offer any loan products for which the consumer would qualify. If the loan originator is compensated for arranging the loan with the other creditor, the originator is not an employee of the creditor in that transaction and is subject to § 226.36(e)(1). *See* comment 36(e)(1)–2.ii.

Safe Harbor; Loan Options Presented

As noted above, to facilitate compliance with the anti-steering rule, the Board proposed to create a safe harbor in §§ 226.36(e)(2) and (3). Under the proposal, a loan originator would be deemed to comply with the anti-steering rule if, under certain conditions, the consumer is presented with a choice of loan options that include (1) the lowest interest rate, (2) the second lowest interest rate, and (3) the lowest total dollar amount for origination points or fees and discount points. For the reasons discussed below, the Board is adopting the proposed safe harbor, with technical clarifications and a modification to the set of loan options that a loan originator must present to the consumer to qualify for the safe harbor.

Under the final rule, a loan originator is deemed to have complied with the anti-steering rule in § 226.36(e)(1) if it satisfies each of three requirements: (1) For each type of transaction in which the consumer expressed an interest (*i.e.,* a fixed-rate, adjustable-rate, or a reverse mortgage), the consumer is presented with and able to choose from loan options that include a loan with the lowest interest rate, a loan with the lowest total dollar amount for origination points or fees and discount points, and a loan with the lowest rate with no risky features, such as a prepayment penalty or negative amortization; (2) the loan options presented to the consumer are obtained by the loan originator from a significant number of the creditors with whom the loan originator regularly does business; and (3) the loan originator believes in good faith that the consumer likely qualifies for the loan options presented to the consumer. The loan originator need only evaluate loan offers that are available from creditors with whom the loan originator regularly does business. *See* §§ 226.36(e)(2)(i)–(iii), 226.36(e)(3)(i)(A)–(C), and 226.36(e)(3)(ii) and corresponding commentary.

The safe harbor is intended to provide loan originators with clear guidance to ensure that they can comply with the anti-steering rule in § 226.36(e). At the same time, the Board believes the safe harbor must be sufficiently flexible to ensure consumers are not unduly restricted from considering various loan options. There is no uniform method available for determining which loans may be in the consumer's interest. Consumers and loan originators generally consider various terms and conditions in relation to other external factors, such as how long the consumer expects to hold the loan or the creditor's reputation for delivering loans within a promised timeframe. Thus, some consumers may reasonably determine that the financial risk created by a certain loan feature, for example shared equity, is acceptable in light of the loan's lower interest rate, while other consumers may prefer to accept a higher rate to avoid the risk associated with a shared equity feature (*e.g.,* potential loss of future equity). The Board believes that consumer advocates' suggestion for narrowing the safe harbor to permit only one type of loan option would unduly restrict consumer choice and access to credit.

The Board believes, however, that there is merit in limiting the safe harbor to circumstances where the loan originator offers a loan option without certain risk features. Such a requirement may serve to deter loan originators from steering consumers to loans with riskier features than they would otherwise choose simply to earn greater compensation. In addition, requiring loan originators to present a loan option with the lowest rate and without certain risky features to obtain the benefit of the safe harbor should place consumers in a better position to compare more traditional loans to loans with riskier features and might result in more consumers opting for "traditional" loans. To this end, such a requirement serves TILA's purpose of avoiding the uninformed use of credit. *See* TILA Section 102(a), 15 U.S.C. 1601(a).

For these reasons, the final rule modifies the safe harbor to require that, in addition to loan options with the lowest rate and the lowest total dollar amount for origination points or fees and discount points, one of the loan options presented to a consumer be a loan with the lowest interest rate that is without any of the following features: Negative amortization; a prepayment penalty; a balloon payment in the first 7 years; a demand feature; shared equity; or shared appreciation. The final rule also provides that if the consumer expresses an interest in a reverse mortgage, a loan without a prepayment penalty, or a shared-equity or shared-appreciation feature must be presented. *See* § 226.36(e)(3)(i)(B). This loan option requirement replaces the requirement under the proposal to offer the consumer a loan option with the second lowest rate. In technical revisions, §§ 226.36(e)(2) and (e)(3)(i) are further clarified that to obtain the safe harbor, loan originators must present loan options to the consumer that include the loan options identified in § 226.36(e)(3)(i); no substantive change is intended. In addition, comments 36(e)–1 through –4 are adopted as proposed to provide guidance on the application of the rule.

The Board believes that requiring loan originators to present loan offers with the lowest interest rate and the lowest total dollar amount for origination points or fees and discount points to avail themselves of the safe harbor will prevent the most egregious practices of originators steering consumers to more expensive loans. Such a requirement may also help to ensure that consumers are able to choose from low-cost alternatives. The Board is not adopting the recommendation by some commenters to provide a rebuttable presumption rather than a safe harbor. As noted above, consumers may choose loans for a variety of reasons, depending on their individual circumstances and preferences. The anti-steering rule is intended to deter the most egregious practices of steering consumers to more expensive loans simply to earn greater compensation, while at the same time preserving consumers' credit options. The Board believes that a presumption of compliance would not serve this purpose as well as a safe harbor, because creditors could incur greater risk by offering more loan options to consumers. *See* comment 36(e)(2)–1, adopted as proposed, clarifying that there is no presumption regarding the loan originator's compliance or noncompliance with § 226.36(e)(1) where a loan originator does not satisfy § 226.36(e)(2).

Comment 36(e)(1)–2.i, adopted substantially as proposed, clarifies that in determining whether a transaction is in the consumer's interest, the loan originator must compare that transaction to other possible loan offers available through the originator, and for which the loan originator in good faith believes the consumer is likely to qualify, at the time that transaction was offered to the consumer. The loan originator need only evaluate those loan offers that are available from creditors with whom the loan originator regularly does business. That is, the final rule does not require a loan originator to establish a new business relationship with any creditor.

The Board is also adopting § 226.36(e)(3)(iii), as proposed, which provides that if a loan originator presents more than three loans to the consumer for each type of transaction in which the consumer expresses an interest, the loan originator must highlight the three loans that satisfy the criteria of the safe harbor, as discussed above.

Some commenters expressed concern, however, that the safe harbor would unnecessarily require loan originators to present consumers with a minimum of three loan options where one or two loan options satisfied the criteria set forth in § 226.36(e)(3)(i). To address these commenters' concerns, the final rule includes new § 226.36(e)(4) to provide that if a single loan fulfills the criteria of all loan options listed in § 226.36(e)(3)(i), loan originators satisfy the requirements of the safe harbor by presenting that loan to the consumer. Thus, loan originators can present fewer than three loans and satisfy §§ 226.36(e)(2) and (e)(3)(i) if the loans presented meet the criteria of the options set forth in § 226.36(e)(3). Furthermore, comment 36(e)(2)–2, which is adopted substantially as proposed, provides additional clarification that presenting more than four loans for each transaction type in which the consumer expressed an interest and for which the consumer likely qualifies would not likely help consumers make a meaningful choice. As noted above, if a loan originator presents more than three loans to a consumer, the loan originator must highlight the three loans that satisfy the criteria set out in the final rule.

Alternatives not adopted. A Federal banking agency recommended offering a safe harbor if the loan originator completed a trade-off table in the RESPA Good Faith Estimate (GFE). The Board is not adopting the recommendation to provide a safe harbor for a completed trade-off table in the RESPA GFE. The trade-off table is designed to help consumers understand the trade-off between interest rates and points. While understanding this trade-off is beneficial, it is not sufficient, by itself, to protect consumers against steering. For example, the trade-off table would not highlight that a loan has a prepayment penalty or other risky feature. Moreover, for adjustable-rate products, the trade-off table reflects only the initial interest rate and not the rate at first adjustment or the maximum possible interest rate. In some cases, a trade-off table might lead a consumer to choose an adjustable rate mortgage because of a low initial rate, without the consumer realizing that the rate could rapidly and significantly increase.

VII. Mandatory Compliance Dates; Effective Dates

The Board requested comment on the length of time necessary for creditors to implement the proposed rule. Industry commenters and their trade associations requested an implementation period of at least 18 to 24 months. The SBA recommended that the Board delay implementation for at least 18 months for small entities. Many of these commenters explained that the proposed rule involved extensive revisions to current business practices regarding loan originator compensation. In contrast, consumer advocates asked that the proposed rule become effective immediately or at least very quickly in light of the substantial consumer injury resulting from loan originator compensation.

Under TILA Section 105(d), certain of the Board's disclosure regulations are to have an effective date of that October 1 which follows by at least six months the date of promulgation. 15 U.S.C. 1604(d). However, the Board may at its discretion lengthen the implementation period for creditors to adjust their forms to accommodate new requirements, or shorten the period where the Board finds that such action is necessary to prevent unfair or deceptive disclosure practices. No similar effective date requirement exists for non-disclosure regulations. The Riegle Community Development and Regulatory Improvement Act of 1994, however, requires that agency regulations which impose additional reporting, disclosure and other requirements on insured depository institutions take effect on the first day of a calendar quarter following publication in final form. 12 U.S.C. 4802(b).

Compliance with the final rule will be mandatory on April 1, 2011. *See* comment 36–2. Thus, the final rule applies to loan originator compensation for transactions subject to § 226.36(d) and (e), for which creditors receive applications on or after April 1, 2011. The Board believes that this will provide sufficient time for creditors and loan originators to make the necessary adjustments to their compensation agreements and practices to conform to the final rule. A longer compliance time such as the 18 to 24 months suggested by creditors is not necessary, given that the rule does not require changes to the timing, content and format of mortgage disclosure forms.

Compliance with the provisions of the final rule is not required before the effective date. Thus, the final rule and the Board's accompanying analysis should have no bearing on whether the acts and practices that are restricted or prohibited under this final rule are deemed to be unfair or deceptive if they occur before the effective date of this rule. Unfair acts or practices can be addressed through case-by-case enforcement actions against specific institutions or individuals, through regulations applying to all institutions and individuals, or both. An enforcement action concerns a specific institution's or individual's conduct and is based on all of the facts and circumstances surrounding that conduct. By contrast, a regulation is prospective and applies to the market as a whole, drawing bright lines that distinguish broad categories of conduct.

Because broad regulations, such as those in the final rule, can require large numbers of institutions and individuals to make major adjustments to their practices, there could be more harm to consumers than benefit if the regulations were effective earlier than the effective date. If institutions and individuals were not provided a reasonable time to make changes to their operations and systems to comply with the final rule, they would either incur excessively large expenses, which would be passed on to consumers, or cease engaging in the regulated activity altogether, to the detriment of consumers. And because an act or practice is unfair only when the harm outweighs the benefits to consumers or to competition, the implementation period preceding the effective date set forth in the final rule is integral to the Board's decision to restrict or prohibit certain acts or practices by regulation.

For these reasons, acts or practices occurring before the effective date of this final rule will be judged on the totality of the circumstances under applicable laws or regulations. Similarly, acts or practices occurring after this final rule's effective date that are not governed by these rules will continue to be judged on the totality of the circumstances under applicable laws or regulations.

VIII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506; 5 CFR 1320 Appendix A.1, the Board has reviewed the final rule under authority delegated to the Board by the Office of Management and Budget. The final rule contains no new collections of information and proposes no substantive changes to existing collections of information pursuant to the Paperwork Reduction Act.

As discussed above, on August 26, 2009 the Board published in the **Federal Register** a notice of proposed rulemaking to amend Regulation Z. 74 FR 43232. The comment period for this notice expired on December 24, 2009. The Board is continuing to review all of the comments and is in the process of developing several final rules.

The Board has a continuing interest in the public's opinions of its collections of information. At any time, comments regarding the burden estimate or any other information, including suggestions for reducing the burden may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

IX. Final Regulatory Flexibility Analysis

In accordance with section 4(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 601–612, the Board is publishing a final regulatory flexibility analysis for the amendments to Regulation Z. The RFA requires an agency either to provide a final regulatory flexibility analysis with a final rule or to certify that the final rule will not have a significant economic impact on a substantial number of small entities. Under regulations issued by the SBA, an entity is considered "small" if it has $175 million or less in assets for banks and other depository institutions;

and $7 million or less in revenues for non-bank mortgage lenders and mortgage brokers.[32]

The Board received a large number of comments contending that the proposed rule would have a significant impact on various businesses. Based on public comment, the Board's own analysis, and for the reasons stated below, the Board believes that this final rule will have a significant economic impact on a substantial number of small entities.

A. Statement of Need for, and Objectives of, the Final Rule

Congress enacted TILA based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. One of the stated purposes of TILA is to provide a meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and avoid the uninformed use of credit. TILA also contains procedural and substantive protections for consumers. TILA directs the Board to prescribe regulations to carry out the purposes of the statute. The Board's Regulation Z implements TILA.

Congress enacted HOEPA in 1994 as an amendment to TILA. HOEPA imposed additional substantive protections on certain high-cost mortgage transactions. HOEPA also charged the Board with prohibiting acts or practices in connection with mortgage loans that are unfair, deceptive, or designed to evade the purposes of HOEPA, and acts or practices in connection with refinancing of mortgage loans that are associated with abusive lending practices or are otherwise not in the interest of borrowers.

The final rule restricts certain loan originator compensation practices to address problems that have been observed in the mortgage market. These restrictions are proposed pursuant to the Board's statutory responsibility to prohibit unfair and deceptive acts and practices in connection with mortgage loans.

B. Summary of Issues Raised by Comments in Response to the Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the RFA, 5 U.S.C 603(a), the Board prepared an initial regulatory flexibility analysis (IRFA) in connection with the proposed rule, and acknowledged that the projected reporting, recordkeeping, and other compliance requirements of the proposed rule would have a significant economic impact on a substantial number of small entities. In addition, the Board recognized that the precise compliance costs would be difficult to ascertain because they would depend on a number of unknown factors, including, among other things, the specifications of the current systems used by small entities to administer and maintain accounts, the complexity of the terms of credit products that they offer, and the range of such product offerings. The Board sought information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small entities.

The Board reviewed comments submitted by various entities in order to ascertain the economic impact of the proposed rule on small entities. A number of financial institutions and mortgage brokers expressed concern that the Board had underestimated the costs of compliance. In addition, the SBA submitted a comment on the Board's IRFA. Executive Order 13272 directs Federal agencies to respond in a final rule to written comments submitted by the SBA on a proposed rule, unless the agency certifies that the public interest is not served by doing so. The Board's response to the SBA's comment letter is below.[33]

Response to the SBA. The SBA expressed concern that the Board's IRFA did not adequately assess the impact of the proposed rule on small entities as required by the RFA. The SBA urged the Board to issue a new proposal containing a revised IRFA. For the reasons stated below, the Board believes that its IRFA complied with the requirements of the RFA and the Board is proceeding with a final rule.

The SBA suggested that the Board failed to provide sufficient information about the economic impact of the proposed rule and that the Board's request for public comment on the costs to small entities of the proposed rule was not appropriate. Section 3(a) of the RFA requires agencies to publish for comment an IRFA which shall describe the impact of the proposed rule on small entities. 5 U.S.C. 603(a). In addition, section 3(b) requires the IRFA to contain certain information including a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record. 5 U.S.C. 603(b).

The Board's IRFA complied with the requirements of the RFA. The IRFA procedure is "intended to evoke commentary from small businesses about the effect of the rule on their activities, and to require agencies to consider the effect of a regulation on those entities." *Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d 855, 868 (D.C. Cir. 2001). The RFA does not require that the Board be able to project the specific dollar amount that a rule will cost small entities in order to implement the rule; rather it requires a description of the projected impact of the rule on small entities and of reporting, recordkeeping, or compliance requirements. 5 U.S.C. 603(a), 603(b)(4). Accordingly, the Board described the projected impact of the proposed rule and sought comments from small entities themselves on the effect the proposed rule would have on their activities. First, the Board described the impact of the proposed rule on small entities by describing the rule's proposed requirements in detail throughout the supplementary information for the proposed rule. Second, the Board described the projected compliance requirements of the rule in its IRFA, noting the need for small entities to comply with recordkeeping requirements, and update systems and loan origination practices.[34]

The SBA also commented that the Board failed to provide sufficient information about the number of small mortgage brokers that may be impacted by the rule. Section 3(b)(3) of the RFA requires the IRFA to contain a description of and, *where feasible,* an estimate of the number of small entities to which the proposed rule will apply. 5 U.S.C. 603(b)(3) (emphasis added). The Board provided a description of the small entities to which the proposed rule would apply and provided an estimate of the number of small depository institutions to which the proposed rule would apply.[35] The Board also provided an estimate of the total number of mortgage broker entities and estimated that most of these were

[32] 13 CFR 121.201.

[33] Advocacy commented on all of the provisions in the Board's August 2009 Closed-End Proposal. The Board is responding in this final rule only to Advocacy's comments that relate to this final rule regarding loan originator compensation. The Board will respond to Advocacy's comments on other proposed provisions when any final rules on those provisions are issued.

[34] 74 FR 43232, 43320; Aug. 26, 2009.

[35] *Id.* at 43319–43320.

small entities.[36] The Board stated that it was not aware of a reliable source for the total number of small entities likely to be affected by the proposal.[37] Thus, the Board did not find it feasible to estimate their number. The Board has previously requested information on the number of small entities, including small mortgage broker entities, in its 2008 proposed rule under HOEPA.[38] Comment letters received by the Board on both the current and the 2008 proposals, including the SBA's comment letters, have not provided additional sources of information about the number of small entities affected.

The SBA also suggested that the Board's IRFA did not sufficiently address alternatives to the proposed rule, especially as they relate to small entities. Section 3(c) of the RFA requires that an IRFA contain a description of any significant alternatives to the proposed rule which *accomplish the stated objectives of applicable statutes* and which minimize any significant economic impact of the proposed rule on small entities. 5 U.S.C. 603(c) (emphasis added). However, the Board's IRFA discusses the alternative of improved disclosures and requests comment on other alternatives.[39]

The SBA's comment letter recommended that the Board replace the proposed substantive rule restricting originator practices with a requirement that creditors disclose the lowest interest rate they would accept for a given loan. However, the Board's IRFA discussion of the disclosure alternative indicates why the Board does not believe that such a disclosure alternative would accomplish the stated objectives of applicable statutes.[40] The Board has extensively considered whether additional disclosures, including disclosing the loan originator's compensation, would achieve the statutory objectives of HOEPA, and even proposed such a disclosure requirement in the 2008 HOEPA Proposed Rule.[41] However, public comment on that proposal, and consumer testing conducted for the Board, provided strong evidence that additional disclosures would not accomplish the goal of HOEPA and the Board's proposal to prevent unfair or deceptive origination practices, which led the Board to withdraw the proposal.[42] The SBA's comment letter asserts that the disclosure alternative should be sufficient to accomplish the Board's regulatory goals, yet it fails to mention the public comment or consumer testing findings relating to the Board's withdrawn 2008 proposal.

The SBA also suggested that, according to a mortgage broker industry trade group, the proposed definition of "loan originator" would limit the flexibility and loan pricing and product options that small business entities can offer. The SBA urged the Board to give full consideration to the trade group's comments. As discussed in the **SUPPLEMENTARY INFORMATION** above, the Board has carefully considered these comments. The final rule is intended to uniformly address the harm that can result from unfair compensation practices, and the Board believes that providing exemptions for any set of loan originators would facilitate circumvention of the rule and undermine its objective. Furthermore, as discussed in the **SUPPLEMENTARY INFORMATION** above, the final rule still affords creditors the flexibility to structure loan pricing to preserve the potential consumer benefit of compensating an originator, or funding third-party closing costs, through the interest rate.

As the SBA notes, the Board requested comment in the supplementary information to the proposal on an alternative that would permit compensation based on loan amount. The Board is adopting this alternative in the final rule.

Other comments. In addition to the SBA's comment letter, a number of industry commenters expressed concerns that the rule, as proposed, would be costly to implement, would not provide enough flexibility, and would not adequately respond to the needs or nature of their business. Mortgage brokers argued that the Board should consider alternatives that would exempt small entities from the proposed rule or mitigate the application of the proposed rule on small entities. As discussed above, the Board concluded that these suggestions do not represent significant alternatives to the proposed rule because they would not meet the objectives of the rule. Many of the issues raised by commenters do not apply uniquely to small entities and are addressed above in other parts of the **SUPPLEMENTARY INFORMATION.**

C. Description of Small Entities to Which the Final Rule Will Apply

The final rule will apply to all institutions and entities that engage in originating or extending closed-end, home-secured credit. The Board is not aware of a reliable source for the total number of small entities likely to be affected by the final rule, and the credit provisions of TILA and Regulation Z have broad applicability to individuals and businesses that originate, extend and service even small numbers of home-secured credit. *See* § 226.1(c)(1).[43] All small entities that originate or extend closed-end loans secured by real property or a dwelling potentially could be subject to at least some aspects of the final rule.

The Board can, however, identify through data from Reports of Condition and Income (call reports) approximate numbers of small depository institutions that will be subject to the final rule. According to March 2010 Call Report data, approximately 8,848 small depository institutions will be subject to the rule. Approximately 15,899 depository institutions in the United States filed Call Report data, approximately 11,218 of which had total domestic assets of $175 million or less and thus were considered small entities for purposes of the RFA. Of the 3,898 banks, 523 thrifts, 6,727 credit unions, and 70 branches of foreign banks that filed Call Report data and were considered small entities, 3,776 banks, 496 thrifts, 4,573 credit unions, and 3 branches of foreign banks, totaling 8,848 institutions, extended mortgage credit. For purposes of this Call Report analysis, thrifts include savings banks, savings and loan entities, co-operative banks and industrial banks.

The Board cannot identify with certainty the number of small non-depository institutions that will be subject to the final rule. Home Mortgage Disclosure Act (HMDA) data indicate that 1,507 non-depository institutions (independent mortgage companies, subsidiaries of a depository institution, or affiliates of a bank holding company) filed HMDA reports in 2009 for 2008 lending activities. Based on the small volume of lending activity reported by these institutions, most are likely to be small.

[36] *Id.*

[37] *Id.* at 43319.

[38] 73 FR 1672, 1720; Jan. 9, 2008.

[39] Section 5(a) of the RFA permits an agency to perform the IRFA analysis (among others) in conjunction with or as part of any other analysis required by any other law if such other analysis satisfies the provisions of the RFA. 5 U.S.C. 605(a). Other alternatives were discussed throughout the supplementary information to the Board's proposal.

[40] 74 FR 43232, 43320; Aug. 26, 2009.

[41] 73 FR 1672; Jan. 9, 2008.

[42] 73 FR 44522; July 30, 2008.

[43] Regulation Z generally applies to "each individual or business that offers or extends credit when four conditions are met: (i) The credit is offered or extended to consumers; (ii) the offering or extension of credit is done regularly; (iii) the credit is subject to a finance charge or is payable by a written agreement in more than four installments, and (iv) the credit is primarily for personal, family, or household purposes." § 226.1(c)(1).

The final rule will apply to mortgage brokers. Loan originators other than mortgage brokers that will be affected by the final rule are employees of creditors (or of brokers) and, as such, are not business entities in their own right. In its 2008 proposed rule under HOEPA, 73 FR 1672, 1720; Jan. 9, 2008, the Board noted that, according to the National Association of Mortgage Brokers (NAMB), there were 53,000 mortgage brokerage companies in 2004 that employed an estimated 418,700 people.[44] The Board estimated that most of these companies are small entities. On the other hand, the U.S. Census Bureau's 2002 Economic Census indicates that there were only 17,041 "mortgage and nonmortgage loan brokers" in the United States at that time.[45]

D. Reporting, Recordkeeping, and Other Compliance Requirements

The compliance requirements of the final rule are described in the SUPPLEMENTARY INFORMATION. Some small entities will be required, among other things, to alter certain business practices, develop new business models, re-train staff, and reprogram operational systems to ensure compliance with the final rule. In addition, Regulation Z currently requires creditors to retain evidence of compliance with Regulation Z for two years. As described in the SUPPLEMENTARY INFORMATION, the final rule clarifies the types of records that creditors must retain to demonstrate compliance with the rule. The effect of the final rule on small entities is unknown. The final rule could affect how loan originators are compensated and will impose certain related recordkeeping requirements on creditors. The precise costs that the final rule will impose on mortgage creditors and loan originators are difficult to ascertain. As discussed above, the Board has requested information about the impact of the rule on small entities but has not received additional sources of information about the number of small entities affected or the costs to small entities. Nevertheless, the Board believes that these costs will have a significant economic effect on small entities, including small mortgage creditors and brokers.

[44] *http://www.namb.org/namb/Industry_Facts.asp?SnID=719224934.* This page of the NAMB Web site, however, no longer provides an estimate of the number of mortgage brokerage companies.

[45] *http://www.census.gov/prod/ec02/ec0252a1us.pdf* (NAICS code 522310).

E. Steps Taken To Minimize the Economic Impact on Small Entities

The steps the Board has taken to minimize the economic impact and compliance burden on small entities, including the factual, policy, and legal reasons for selecting the alternatives adopted and why each one of the other significant alternatives was not accepted, are described above in the SUPPLEMENTARY INFORMATION and in the summary of issues raised by the public comments in response to the proposal's IRFA. For example, the Board has adopted an alternative that permits loan originator compensation to be based on loan amount. The SBA and small entity commenters stated that this alternative would be less burdensome and would provide more flexibility to small entity loan originators. In addition, the final rule does not apply to open-end credit or timeshare plans, and the final rule does not extend the record retention requirement to persons other than the creditor who pays loan originator compensation. The Board believes that these provisions minimize the significant economic impact on small entities while still meeting the stated objectives of HOEPA and TILA.

List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), and 1639(l); Pub L. 111–24 § 2, 123 Stat. 1734.

Subpart A—General

■ 2. Section 226.1 is amended by revising paragraphs (b) and (d)(5) to read as follows:

§ 226.1 Authority, purpose, coverage, organization, enforcement, and liability.

* * * * *

(b) *Purpose.* The purpose of this regulation is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The regulation also includes substantive protections. It gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes. The regulation does not generally govern charges for consumer credit, except that several provisions in Subpart G set forth special rules addressing certain charges applicable to credit card accounts under an open-end (not home-secured) consumer credit plan. The regulation requires a maximum interest rate to be stated in variable-rate contracts secured by the consumer's dwelling. It also imposes limitations on home-equity plans that are subject to the requirements of § 226.5b and mortgages that are subject to the requirements of § 226.32. The regulation prohibits certain acts or practices in connection with credit secured by a dwelling in § 226.36, and credit secured by a consumer's principal dwelling in § 226.35. The regulation also regulates certain practices of creditors who extend private education loans as defined in § 226.46(b)(5).

* * * * *

(d) * * *

(5) Subpart E contains special rules for mortgage transactions. Section 226.32 requires certain disclosures and provides limitations for closed-end loans that have rates or fees above specified amounts. Section 226.33 requires special disclosures, including the total annual loan cost rate, for reverse mortgage transactions. Section 226.34 prohibits specific acts and practices in connection with closed-end mortgage transactions that are subject to § 226.32. Section 226.35 prohibits specific acts and practices in connection with closed-end higher-priced mortgage loans, as defined in § 226.35(a). Section 226.36 prohibits specific acts and practices in connection with an extension of credit secured by a dwelling.

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

■ 3. Section 226.36 is amended by:
■ A. Revising the section heading;
■ B. Revising paragraph (a);
■ C. Redesignating paragraph (d) as paragraph (f) and revising it; and
■ D. Adding new paragraphs (d) and (e).

The additions and revisions read as follows:

§ 226.36 Prohibited acts or practices in connection with credit secured by a dwelling.

(a) *Loan originator and mortgage broker defined.* (1) *Loan originator.* For purposes of this section, the term "loan originator" means with respect to a particular transaction, a person who for compensation or other monetary gain, or in expectation of compensation or other monetary gain, arranges, negotiates, or otherwise obtains an extension of consumer credit for another person. The term "loan originator" includes an employee of the creditor if the employee meets this definition. The term "loan originator" includes the creditor only if the creditor does not provide the funds for the transaction at consummation out of the creditor's own resources, including drawing on a *bona fide* warehouse line of credit, or out of deposits held by the creditor.

(2) *Mortgage broker.* For purposes of this section, a mortgage broker with respect to a particular transaction is any loan originator that is not an employee of the creditor.

* * * * *

(d) *Prohibited payments to loan originators.* (1) *Payments based on transaction terms or conditions.* (i) In connection with a consumer credit transaction secured by a dwelling, no loan originator shall receive and no person shall pay to a loan originator, directly or indirectly, compensation in an amount that is based on any of the transaction's terms or conditions.

(ii) For purposes of this paragraph (d)(1), the amount of credit extended is not deemed to be a transaction term or condition, provided compensation received by or paid to a loan originator, directly or indirectly, is based on a fixed percentage of the amount of credit extended; however, such compensation may be subject to a minimum or maximum dollar amount.

(iii) This paragraph (d)(1) shall not apply to any transaction in which paragraph (d)(2) of this section applies.

(2) *Payments by persons other than consumer.* If any loan originator receives compensation directly from a consumer in a consumer credit transaction secured by a dwelling:

(i) No loan originator shall receive compensation, directly or indirectly, from any person other than the consumer in connection with the transaction; and

(ii) No person who knows or has reason to know of the consumer-paid compensation to the loan originator (other than the consumer) shall pay any compensation to a loan originator, directly or indirectly, in connection with the transaction.

(3) *Affiliates.* For purposes of this paragraph (d), affiliates shall be treated as a single "person."

(e) *Prohibition on steering.* (1) *General.* In connection with a consumer credit transaction secured by a dwelling, a loan originator shall not direct or "steer" a consumer to consummate a transaction based on the fact that the originator will receive greater compensation from the creditor in that transaction than in other transactions the originator offered or could have offered to the consumer, unless the consummated transaction is in the consumer's interest.

(2) *Permissible transactions.* A transaction does not violate paragraph (e)(1) of this section if the consumer is presented with loan options that meet the conditions in paragraph (e)(3) of this section for each type of transaction in which the consumer expressed an interest. For purposes of paragraph (e) of this section, the term "type of transaction" refers to whether:

(i) A loan has an annual percentage rate that cannot increase after consummation;

(ii) A loan has an annual percentage rate that may increase after consummation; or

(iii) A loan is a reverse mortgage.

(3) *Loan options presented.* A transaction satisfies paragraph (e)(2) of this section only if the loan originator presents the loan options required by that paragraph and all of the following conditions are met:

(i) The loan originator must obtain loan options from a significant number of the creditors with which the originator regularly does business and, for each type of transaction in which the consumer expressed an interest, must present the consumer with loan options that include:

(A) The loan with the lowest interest rate;

(B) The loan with the lowest interest rate without negative amortization, a prepayment penalty, interest-only payments, a balloon payment in the first 7 years of the life of the loan, a demand feature, shared equity, or shared appreciation; or, in the case of a reverse mortgage, a loan without a prepayment penalty, or shared equity or shared appreciation; and

(C) The loan with the lowest total dollar amount for origination points or fees and discount points.

(ii) The loan originator must have a good faith belief that the options presented to the consumer pursuant to paragraph (e)(3)(i) of this section are loans for which the consumer likely qualifies.

(iii) For each type of transaction, if the originator presents to the consumer more than three loans, the originator must highlight the loans that satisfy the criteria specified in paragraph (e)(3)(i) of this section.

(4) *Number of loan options presented.* The loan originator can present fewer than three loans and satisfy paragraphs (e)(2) and (e)(3)(i) of this section if the loan(s) presented to the consumer satisfy the criteria of the options in paragraph (e)(3)(i) of this section and the provisions of paragraph (e)(3) of this section are otherwise met.

(f) This section does not apply to a home-equity line of credit subject to § 226.5b. Section 226.36(d) and (e) do not apply to a loan that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D).

■ 4. In Supplement I to Part 226:

■ A. Under *Section 226.25—Record Retention, 25(a) General rule,* new paragraph 5 is added.

■ B. Under *Section 226.36—Prohibited Acts or Practices in Connection With Credit Secured by a Dwelling* ,

■ 1. Revise the heading;

■ 2. Redesignate paragraph 1 as paragraph 3;

■ 3. Add paragraphs 1 and 2;

■ 4. Under *36(a) Mortgage broker defined,* revise the heading, revise paragraph 1, and add paragraphs 2, 3, and 4; and

■ 5. Add entries for *36(d) Prohibited payments to loan originators* and *36(e) Prohibition on steering.*

The additions and revisions read as follows:

Supplement I To Part 226—Official Staff Interpretations

* * * * *

Subpart D—Miscellaneous

* * * * *

Section 226.25—Record Retention

25(a) General rule.

* * * * *

5. *Prohibited payments to loan originators.* For each transaction subject to the loan originator compensation provisions in § 226.36(d)(1), a creditor should maintain records of the compensation it provided to the loan originator for the transaction as well as the compensation agreement in effect on the date the interest rate was set for the transaction. See § 226.35(a) and comment 35(a)(2)(iii)–3 for additional guidance on when a transaction's rate is set. For example, where a loan originator is a mortgage broker, a disclosure of compensation or other broker agreement required by applicable state law that complies with § 226.25 would be presumed to be a record of the amount actually paid to the loan originator in connection with the transaction.

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

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Section 226.36—Prohibited Acts or Practices in Connection with Credit Secured by a Dwelling

1. *Scope of coverage.* Sections 226.36(b) and (c) apply to closed-end consumer credit transactions secured by a consumer's principal dwelling. Sections 226.36(d) and (e) apply to closed-end consumer credit transactions secured by a dwelling. Sections 226.36(d) and (e) apply to closed-end loans secured by first or subordinate liens, and reverse mortgages that are not home-equity lines of credit under § 226.5b. *See* § 226.36(f) for additional restrictions on the scope of this section, and §§ 226.1(c) and 226.3(a) and corresponding commentary for further discussion of extensions of credit subject to Regulation Z.

2. *Mandatory compliance date for §§ 226.36(d) and (e).* The final rules on loan originator compensation in § 226.36 apply to transactions for which the creditor receives an application on or after April 1, 2011. For example, assume a mortgage broker takes an application on March 10, 2011, which the creditor receives on March 25, 2011. This transaction is not covered. If, however, the creditor does not receive the application until April 5, 2011, the transaction is covered.

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36(a) Loan originator and mortgage broker defined.

1. *Meaning of loan originator.* i. *General.* Section 226.36(a) provides that a loan originator is any person who for compensation or other monetary gain arranges, negotiates, or otherwise obtains an extension of consumer credit for another person. Thus, the term "loan originator" includes employees of a creditor as well as employees of a mortgage broker that satisfy this definition. In addition, the definition of loan originator expressly includes any creditor that satisfies the definition of loan originator but makes use of "table funding" by a third party. *See* comment 36(a)–1.ii below discussing table funding. Although consumers may sometimes arrange, negotiate, or otherwise obtain extensions of consumer credit on their own behalf, in such cases they do not do so for another person or for compensation or other monetary gain, and therefore are not loan originators under this section. (Under § 226.2(a)(22), the term "person" means a natural person or an organization.)

ii. *Table funding.* Table funding occurs when the creditor does not provide the funds for the transaction at consummation out of the creditor's own resources, including drawing on a *bona fide* warehouse line of credit, or out of deposits held by the creditor. Accordingly, a table-funded transaction is consummated with the debt obligation initially payable by its terms to one person, but another person provides the funds for the transaction at consummation and receives an immediate assignment of the note, loan contract, or other evidence of the debt obligation. Although § 226.2(a)(17)(i)(B) provides that a person to whom a debt obligation is initially payable on its face generally is a creditor, § 226.36(a)(1) provides that, solely for the purposes of § 226.36, such a person is also considered a loan originator. The creditor is not considered a loan originator unless table funding occurs. For example, if a person closes a loan in its own name but does not fund the loan from its own resources or deposits held by it because it assigns the loan at consummation, it is considered a creditor for purposes of Regulation Z and also a loan originator for purposes of § 226.36. However, if a person closes a loan in its own name and draws on a *bona fide* warehouse line of credit to make the loan at consummation, it is considered a creditor, not a loan originator, for purposes of Regulation Z, including § 226.36.

iii. *Servicing.* The definition of "loan originator" does not apply to a loan servicer when the servicer modifies an existing loan on behalf of the current owner of the loan. The rule only applies to extensions of consumer credit and does not apply if a modification of an existing obligation's terms does not constitute a refinancing under § 226.20(a).

2. *Meaning of mortgage broker.* For purposes of § 226.36, with respect to a particular transaction, the term "mortgage broker" refers to a loan originator who is not an employee of the creditor. Accordingly, the term "mortgage broker" includes companies that engage in the activities described in § 226.36(a) and also includes employees of such companies that engage in these activities. Section 226.36(d) prohibits certain payments to a loan originator. These prohibitions apply to payments made to all loan originators, including payments made to mortgage brokers, and payments made by a company acting as a mortgage broker to its employees who are loan originators.

3. *Meaning of creditor.* For purposes of § 226.36(d) and (e), a creditor means a creditor that is not deemed to be a loan originator on the transaction under this section. Thus, a person that closes a loan in its own name (but another person provides the funds for the transaction at consummation and receives an immediate assignment of the note, loan contract, or other evidence of the debt obligation) is deemed a loan originator, not a creditor, for purposes of § 226.36. However, that person is still a creditor for all other purposes of Regulation Z.

4. *Managers and administrative staff.* For purposes of § 226.36, managers, administrative staff, and similar individuals who are employed by a creditor or loan originator but do not arrange, negotiate, or otherwise obtain an extension of credit for a consumer, and whose compensation is not based on whether any particular loan is originated, are not loan originators.

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36(d) Prohibited payments to loan originators.

1. *Persons covered.* Section 226.36(d) prohibits any person (including the creditor) from paying compensation to a loan originator in connection with a covered credit transaction, if the amount of the payment is based on any of the transaction's terms or conditions. For example, a person that purchases a loan from the creditor may not compensate the loan originator in a manner that violates § 226.36(d).

2. *Mortgage brokers.* The payments made by a company acting as a mortgage broker to its employees who are loan originators are subject to the section's prohibitions. For example, a mortgage broker may not pay its employee more for a transaction with a 7 percent interest rate than for a transaction with a 6 percent interest rate.

36(d)(1) Payments based on transaction terms and conditions.

1. *Compensation.* i. *General.* For purposes of § 226.36(d) and (e), the term "compensation" includes salaries, commissions, and any financial or similar incentive provided to a loan originator that is based on any of the terms or conditions of the loan originator's transactions. See comment 36(d)(1)–3 for examples of types of compensation that are not covered by § 226.36(d) and (e). For example, the term "compensation" includes:

A. An annual or other periodic bonus; or

B. Awards of merchandise, services, trips, or similar prizes.

ii. *Name of fee.* Compensation includes amounts the loan originator retains and is not dependent on the label or name of any fee imposed in connection with the transaction. For example, if a loan originator imposes a "processing fee" in connection with the transaction and retains such fee, it is deemed compensation for purposes of § 226.36(d) and (e), whether the originator expends the time to process the consumer's application or uses the fee for other expenses, such as overhead.

iii. *Amounts for third-party charges.* Compensation includes amounts the loan originator retains, but does not include amounts the originator receives as payment for *bona fide* and reasonable third-party charges, such as title insurance or appraisals. In some cases, amounts received for payment for third-party charges may exceed the actual charge because, for example, the originator cannot determine with accuracy what the actual charge will be before consummation. In such a case, the difference retained by the originator is not deemed compensation if the third-party charge imposed on the consumer was *bona fide* and reasonable, and also complies with state and other applicable law. On the other hand, if the originator marks up a third-party charge (a practice known as "upcharging"), and the originator retains the difference between the actual charge and the marked-up charge, the amount retained is compensation for purposes of § 226.36(d) and (e). For example:

A. Assume a loan originator charges the consumer a $400 application fee that includes $50 for a credit report and $350 for an appraisal. Assume that $50 is the amount the creditor pays for the credit report. At the time the loan originator imposes the application fee on the consumer, the loan originator is uncertain of the cost of the appraisal because the originator may choose from appraisers that charge between $300 to $350 for appraisals. Later, the cost for the appraisal is determined to be $300 for this consumer's transaction. In this case, the $50 difference between the $400 application fee imposed on the consumer and the actual $350 cost for the credit report and appraisal is not deemed compensation for purposes of § 226.36(d) and (e), even though the $50 is retained by the loan originator.

B. Using the same example in comment 36(d)(1)–1.iii.A above, the $50 difference would be compensation for purposes of § 226.36(d) and (e) if the appraisers from whom the originator chooses charge fees between $250 and $300.

2. *Examples of compensation that is based on transaction terms or conditions.* Section 226.36(d)(1) prohibits loan originator compensation that is based on the terms or conditions of the loan originator's transactions. For example, the rule prohibits compensation to a loan originator for a transaction based on that transaction's interest rate, annual percentage rate, loan-to-value ratio, or the existence of a prepayment penalty. The rule also prohibits compensation based on a factor that is a proxy for a transaction's terms or conditions. For example, a consumer's credit score or similar representation of credit risk, such as the consumer's debt-to-income ratio, is not one of the transaction's terms or conditions. However, if a loan originator's compensation varies in whole or in part with a factor that serves as a proxy for loan terms or conditions, then the originator's compensation is based on a transaction's terms or conditions. To illustrate, assume that consumer A and consumer B receive loans from the same loan originator and the same creditor. Consumer A has a credit score of 650, and consumer B has a credit score of 800. Consumer A's loan has a 7 percent interest rate, and consumer B's loan has a 6½ percent interest rate because of the consumers' different credit scores. If the creditor pays the loan originator $1,500 in compensation for consumer A's loan and $1,000 in compensation for consumer B's loan because the creditor varies compensation payments in whole or in part with a consumer's credit score, the originator's compensation would be based on the transactions' terms or conditions.

3. *Examples of compensation not based on transaction terms or conditions.* The following are only illustrative examples of compensation methods that are permissible (unless otherwise prohibited by applicable law), and not an exhaustive list. Compensation is not based on the transaction's terms or conditions if it is based on, for example:

i. The loan originator's overall loan volume (*i.e.,* total dollar amount of credit extended or total number of loans originated), delivered to the creditor.

ii. The long-term performance of the originator's loans.

iii. An hourly rate of pay to compensate the originator for the actual number of hours worked.

iv. Whether the consumer is an existing customer of the creditor or a new customer.

v. A payment that is fixed in advance for every loan the originator arranges for the creditor (*e.g.,* $600 for every loan arranged for the creditor, or $1,000 for the first 1,000 loans arranged and $500 for each additional loan arranged).

vi. The percentage of applications submitted by the loan originator to the creditor that result in consummated transactions.

vii. The quality of the loan originator's loan files (*e.g.,* accuracy and completeness of the loan documentation) submitted to the creditor.

viii. A legitimate business expense, such as fixed overhead costs.

ix. Compensation that is based on the amount of credit extended, as permitted by § 226.36(d)(1)(ii). *See* comment 36(d)(1)–9 discussing compensation based on the amount of credit extended.

4. *Creditor's flexibility in setting loan terms.* Section 226.36(d)(1) does not limit a creditor's ability to offer a higher interest rate in a transaction as a means for the consumer to finance the payment of the loan originator's compensation or other costs that the consumer would otherwise be required to pay directly (either in cash or out of the loan proceeds). Thus, a creditor may charge a higher interest rate to a consumer who will pay fewer of the costs of the transaction directly, or it may offer the consumer a lower rate if the consumer pays more of the costs directly. For example, if the consumer pays half of the transaction costs directly, a creditor may charge an interest rate of 6 percent but, if the consumer pays none of the transaction costs directly, the creditor may charge an interest rate of 6.5 percent. Section 226.36(d)(1) also does not limit a creditor from offering or providing different loan terms to the consumer based on the creditor's assessment of the credit and other transactional risks involved. A creditor could also offer different consumers varying interest rates that include a constant interest rate premium to recoup the loan originator's compensation through increased interest paid by the consumer (such as by adding a constant 0.25 percent to the interest rate on each loan).

5. *Effect of modification of loan terms.* Under § 226.36(d)(1), a loan originator's compensation may not vary based on any of a credit transaction's terms or conditions. Thus, a creditor and originator may not agree to set the originator's compensation at a certain level and then subsequently lower it in selective cases (such as where the consumer is able to obtain a lower rate from another creditor). When the creditor offers to extend a loan with specified terms and conditions (such as the rate and points), the amount of the originator's compensation for that transaction is not subject to change (increase or decrease) based on whether different loan terms are negotiated. For example, if the creditor agrees to lower the rate that was initially offered, the new offer may not be accompanied by a reduction in the loan originator's compensation.

6. *Periodic changes in loan originator compensation and transactions' terms and conditions.* This section does not limit a creditor or other person from periodically revising the compensation it agrees to pay a loan originator. However, the revised compensation arrangement must result in payments to the loan originator that do not vary based on the terms or conditions of a credit transaction. A creditor or other person might periodically review factors such as loan performance, transaction volume, as well as current market conditions for originator compensation, and prospectively revise the compensation it agrees to pay to a loan originator. For example, assume that during the first 6 months of the year, a creditor pays $3,000 to a particular loan originator for each loan delivered, regardless of the loan terms or conditions. After considering the volume of business produced by that originator, the creditor could decide that as of July 1, it will pay $3,250 for each loan delivered by that particular originator, regardless of the loan terms or conditions. No violation occurs even if the loans made by the creditor after July 1 generally carry a higher interest rate than loans made before that date, to reflect the higher compensation.

7. *Compensation received directly from the consumer.* The prohibition in § 226.36(d)(1) does not apply to transactions in which any loan originator receives compensation directly from the consumer, in which case no other person may provide any compensation to a loan originator, directly or indirectly, in connection with that particular transaction pursuant to § 226.36(d)(2). Payments to a loan originator made out of loan proceeds are considered compensation received directly from the consumer, while payments derived from an increased interest rate are not considered compensation received directly from the consumer. However, points paid on the loan by the consumer to the creditor are not considered payments received directly from the consumer whether they are paid in cash or out of the loan proceeds. That is, if the consumer pays origination points to the creditor and the creditor compensates the loan originator, the loan originator may not also receive compensation directly from the consumer. Compensation includes amounts retained by the loan originator, but does not include amounts the loan originator receives as payment for *bona fide* and reasonable third-party charges, such as title insurance or appraisals. *See* comment 36(d)(1)–1.

8. *Record retention.* See comment 25(a)–5 for guidance on complying with the record retention requirements of § 226.25(a) as they apply to § 226.36(d)(1).

9. *Amount of credit extended.* A loan originator's compensation may be based on the amount of credit extended, subject to certain conditions. Section 226.36(d)(1) does not prohibit an arrangement under which a loan originator is paid compensation based on a percentage of the amount of credit extended, provided the percentage is fixed and does not vary with the amount of credit extended. However, compensation that is based on a fixed percentage of the amount of credit extended may be subject to a minimum and/or maximum dollar amount, as long as the minimum and maximum dollar amounts do not vary with each credit transaction. For example:

i. A creditor may offer a loan originator 1 percent of the amount of credit extended for all loans the originator arranges for the creditor, but not less than $1,000 or greater than $5,000 for each loan.

ii. A creditor may *not* offer a loan originator 1 percent of the amount of credit extended for loans of $300,000 or more, 2 percent of the amount of credit extended for loans between $200,000 and $300,000, and 3 percent of the amount of credit extended for loans of $200,000 or less.

36(d)(2) Payments by persons other than consumer.

1. *Compensation in connection with a particular transaction.* Under § 226.36(d)(2), if any loan originator receives compensation directly from a consumer in a transaction, no other person may provide any compensation to a loan originator, directly or indirectly, in connection with that particular credit transaction. *See* comment 36(d)(1)–7 discussing compensation received directly from the consumer. The restrictions imposed under § 226.36(d)(2) relate only to payments, such as commissions, that are specific to, and paid solely in connection with, the transaction in which the consumer has paid compensation directly to a loan originator. Thus, payments by a mortgage broker company to an employee in the form of a salary or hourly wage, which is not tied to a specific transaction, do not violate § 226.36(d)(2) even if the consumer directly pays a loan originator a fee in connection with a specific credit transaction. However, if any loan originator receives compensation directly from the consumer in connection with a specific credit transaction, neither the mortgage broker company nor an employee of the mortgage broker company can receive compensation from the creditor in connection with that particular credit transaction.

2. *Compensation received directly from a consumer.* Under Regulation X, which implements the Real Estate Settlement Procedures Act (RESPA), a yield spread premium paid by a creditor to the loan originator may be characterized on the RESPA disclosures as a "credit" that will be applied to reduce the consumer's settlement charges, including origination fees. A yield spread premium disclosed in this manner is not considered to be received by the loan originator directly from the consumer for purposes of § 226.36(d)(2).

36(d)(3) Affiliates.

1. For purposes of § 226.36(d), affiliates are treated as a single "person." The term "affiliate" is defined in § 226.32(b)(2). For example, assume a parent company has two mortgage lending subsidiaries. Under § 226.36(d)(1), subsidiary "A" could not pay a loan originator greater compensation for a loan with an interest rate of 8 percent than it would pay for a loan with an interest rate of 7 percent. If the loan originator may deliver loans to both subsidiaries, they must compensate the loan originator in the same manner. Accordingly, if the loan originator delivers the loan to subsidiary "B" and the interest rate is 8 percent, the originator must receive the same compensation that would have been paid by subsidiary A for a loan with a rate of either 7 or 8 percent.

36(e) Prohibition on steering.

1. *Compensation.* See comment 36(d)(1)–1 for guidance on compensation that is subject to § 226.36(e).

Paragraph 36(e)(1).

1. *Steering.* For purposes of § 226.36(e), directing or "steering" a consumer to consummate a particular credit transaction means advising, counseling, or otherwise influencing a consumer to accept that transaction. For such actions to constitute steering, the consumer must actually consummate the transaction in question. Thus, § 226.36(e)(1) does not address the actions of a loan originator if the consumer does not actually obtain a loan through that loan originator.

2. *Prohibited conduct.* Under § 226.36(e)(1), a loan originator may not direct or steer a consumer to consummate a transaction based on the fact that the loan originator would increase the amount of compensation that the loan originator would receive for that transaction compared to other transactions, unless the consummated transaction is in the consumer's interest.

i. In determining whether a consummated transaction is in the consumer's interest, that transaction must be compared to other possible loan offers available through the originator, if any, and for which the consumer was likely to qualify, at the time that transaction was offered to the consumer. Possible loan offers are available through the loan originator if they could be obtained from a creditor with which the loan originator regularly does business. Section 226.36(e)(1) does not require a loan originator to establish a business relationship with any creditor with which the loan originator does not already do business. To be considered a possible loan offer available through the loan originator, an offer need not be extended by the creditor; it need only be an offer that the creditor likely would extend upon receiving an application from the applicant, based on the creditor's current credit standards and its current rate sheets or other similar means of communicating its current credit terms to the loan originator. An originator need not inform the consumer about a potential transaction if the originator makes a good faith determination that the consumer is not likely to qualify for it.

ii. Section 226.36(e)(1) does not require a loan originator to direct a consumer to the transaction that will result in a creditor paying the least amount of compensation to the originator. However, if the loan originator reviews possible loan offers available from a significant number of the creditors with which the originator regularly does business, and the originator directs the consumer to the transaction that will result in the least amount of creditor-paid compensation for the loan originator, the requirements of § 226.36(e)(1) are deemed to be satisfied. In the case where a loan originator directs the consumer to the transaction that will result in a greater amount of creditor-paid compensation for the loan originator, § 226.36(e)(1) is not violated if the terms and conditions on that transaction compared to the other possible loan offers available through the originator, and for which the consumer likely qualifies, are the same. A loan originator who is an employee of the creditor on a transaction may not obtain compensation that is based on the transaction's terms or conditions pursuant to § 226.36(d)(1), and compliance with that provision by such a loan originator also satisfies the requirements of § 226.36(e)(1) for that transaction with the creditor. However, if a creditor's employee acts as a broker by forwarding a consumer's application to a creditor *other than* the loan originator's employer, such as when the employer does not offer any loan products for which the consumer would qualify, the loan originator is not an employee of the creditor in that transaction and is subject to § 226.36(e)(1) if the originator is compensated for arranging the loan with the other creditor.

iii. See the commentary under § 226.36(e)(3) for additional guidance on what constitutes a "significant number of creditors with which a loan originator regularly does business" and guidance on the determination about transactions for which "the consumer likely qualifies."

3. *Examples.* Assume a loan originator determines that a consumer likely qualifies for a loan from Creditor A that has a fixed interest rate of 7 percent, but the loan originator directs the consumer to a loan from Creditor B having a rate of 7.5 percent. If the loan originator receives more in compensation from Creditor B than the amount that would have been paid by Creditor A, the prohibition in § 226.36(e) is violated unless the higher-rate loan is in the consumer's interest. For example, a higher-rate loan might be in the consumer's interest if the lower-rate loan has a prepayment penalty, or if the lower-rate loan requires the consumer to pay more in up-front charges that the consumer is unable or unwilling to pay or finance as part of the loan amount.

36(e)(2) Permissible transactions.

1. *Safe harbors.* A loan originator that satisfies § 226.36(e)(2) is deemed to comply with § 226.36(e)(1). A loan originator that does not satisfy § 226.36(e)(2) is not subject to any presumption regarding the originator's compliance or noncompliance with § 226.36(e)(1).

2. *Minimum number of loan options.* To obtain the safe harbor, § 226.36(e)(2) requires that the loan originator present loan options that meet the criteria in § 226.36(e)(3)(i) for each type of transaction in which the consumer expressed an interest. As required by § 226.36(e)(3)(ii), the loan originator must have a good faith belief that the options presented are loans for which the consumer likely qualifies. If the loan originator is not able to form such a good faith belief for loan options that meet the criteria in § 226.36(e)(3)(i) for a given type of transaction, the loan originator may satisfy § 226.36(e)(2) by presenting all loans for which the consumer likely qualifies and that meet the other requirements in § 226.36(e)(3) for that given type of transaction. A loan originator may present to the consumer any number of loan options, but presenting a consumer more than four loan options for each type of transaction in which the consumer expressed an interest and for which the consumer likely qualifies would not likely help the consumer make a meaningful choice.

36(e)(3) Loan options presented.

1. *Significant number of creditors.* A significant number of the creditors with which a loan originator regularly does business is three or more of those creditors. If the loan originator regularly does business with fewer than three creditors, the originator is deemed to comply by obtaining loan options from all the creditors with which it regularly does business. Under § 226.36(e)(3)(i), the loan originator must obtain loan options from a significant number of creditors with which the loan

originator regularly does business, but the loan originator need not present loan options from all such creditors to the consumer. For example, if three loans available from one of the creditors with which the loan originator regularly does business satisfy the criteria in § 226.36(e)(3)(i), presenting those and no options from any other creditor satisfies that section.

2. *Creditors with which loan originator regularly does business.* To qualify for the safe harbor in § 226.36(e)(2), the loan originator must obtain and review loan options from a significant number of the creditors with which the loan originator regularly does business. For this purpose, a loan originator regularly does business with a creditor if:

i. There is a written agreement between the originator and the creditor governing the originator's submission of mortgage loan applications to the creditor;

ii. The creditor has extended credit secured by a dwelling to one or more consumers during the current or previous calendar month based on an application submitted by the loan originator; or

iii. The creditor has extended credit secured by a dwelling twenty-five or more times during the previous twelve calendar months based on applications submitted by the loan originator. For this purpose, the previous twelve calendar months begin with the calendar month that precedes the month in which the loan originator accepted the consumer's application.

3. *Lowest interest rate.* To qualify under the safe harbor in § 226.36(e)(2), for each type of transaction in which the consumer has expressed an interest, the loan originator must present the consumer with loan options that meet the criteria in § 226.36(e)(3)(i). The criteria are: The loan with the lowest interest rate; the loan with the lowest total dollar amount for discount points and origination points or fees; and a loan with the lowest interest rate without negative amortization, a prepayment penalty, a balloon payment in the first seven years of the loan term, shared equity, or shared appreciation, or, in the case of a reverse mortgage, a loan without a prepayment penalty, shared equity, or shared appreciation. To identify the loan with the lowest interest rate, for any loan that has an initial rate that is fixed for at least five years, the loan originator shall use the initial rate that would be in effect at consummation. For a loan with an initial rate that is not fixed for at least five years:

i. If the interest rate varies based on changes to an index, the originator shall use the fully-indexed rate that would be in effect at consummation without regard to any initial discount or premium.

ii. For a step-rate loan, the originator shall use the highest rate that would apply during the first five years.

4. *Transactions for which the consumer likely qualifies.* To qualify under the safe harbor in § 226.36(e)(2), the loan originator must have a good faith belief that the loan options presented to the consumer pursuant to § 226.36(e)(3) are transactions for which the consumer likely qualifies. The loan originator's belief that the consumer likely qualifies should be based on information reasonably available to the loan originator at the time the loan options are presented. In making this determination, the loan originator may rely on information provided by the consumer, even if it subsequently is determined to be inaccurate. For purposes of § 226.36(e)(3), a loan originator is not expected to know all aspects of each creditor's underwriting criteria. But pricing or other information that is routinely communicated by creditors to loan originators is considered to be reasonably available to the loan originator, for example, rate sheets showing creditors' current pricing and the required minimum credit score or other eligibility criteria.

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By order of the Board of Governors of the Federal Reserve System, September 1, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–22161 Filed 9–23–10; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Docket No. R–1390]

Regulation Z; Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Board proposes to amend Regulation Z, which implements the Truth in Lending Act (TILA), and the staff commentary to the regulation, as part of a comprehensive review of TILA's rules for home-secured credit. This proposal would revise the rules for the consumer's right to rescind certain open-end and closed-end loan secured by the consumer's principal dwelling. In addition, the proposal contains revisions to the rules for determining when a modification of an existing closed-end mortgage loan secured by real property or a dwelling is a new transaction requiring new disclosures. The proposal would amend the rules for determining whether a closed-end loan secured by the consumer's principal dwelling is a "higher-priced" mortgage loan subject to the special protections in § 226.35. The proposal would provide consumers with a right to a refund of fees imposed during the three business days following the consumer's receipt of early disclosures for closed-end loans secured by real property or a dwelling.

The proposal also would amend the disclosure rules for open- and closed-end reverse mortgages. In addition, the proposal would prohibit certain unfair acts or practices for reverse mortgages. A creditor would be prohibited from conditioning a reverse mortgage on the consumer's purchase of another financial or insurance product such as an annuity, and a creditor could not extend a reverse mortgage unless the consumer has obtained counseling. The proposal also would amend the rules for reverse mortgage advertising.

DATES: Comments must be received on or before December 23, 2010.

ADDRESSES: You may submit comments, identified by Docket No. R–1390, by any of the following methods:

- *Agency Web Site*: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: For home-equity lines of credit: Jennifer S. Benson or Jelena McWilliams, Attorneys; Krista P. Ayoub or John C. Wood, Counsels. For closed-end mortgages: Jamie Z. Goodson, Catherine Henderson, Nikita M. Pastor, Samantha J. Pelosi, or Maureen C. Yap, Attorneys; Paul Mondor, Senior Attorney. For reverse mortgages, Brent Lattin or Lorna M. Neill, Senior Attorneys. Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background on TILA and Regulation Z

Congress enacted the Truth in Lending Act (TILA) based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. One of the purposes of TILA is to provide meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and avoid the uninformed use of credit.

TILA's disclosures differ depending on whether credit is an open-end (revolving) plan or a closed-end (installment) loan. TILA also contains procedural and substantive protections for consumers. TILA is implemented by the Board's Regulation Z. An Official Staff Commentary interprets the requirements of Regulation Z. By statute, creditors that follow in good faith Board or official staff interpretations are insulated from civil liability, criminal penalties, or administrative sanction.

II. Summary of Major Proposed Changes

The goal of the proposed amendments to Regulation Z is to update and make clarifying changes to the rules regarding the consumer's right to rescind certain open- and closed-end loans secured by the consumer's principal dwelling. The amendments would also ensure that consumers receive TILA disclosures for modifications to key loan terms, by revising the rules regarding when a modification to an existing closed-end mortgage loan results in a new transaction. The amendments would ensure that prime loans are not incorrectly classified as "higher-priced mortgage loans" subject to special protections for subprime loans in the Board's 2008 HOEPA Final Rule in § 226.35, or as HOEPA loans under § 226.32. The proposal would provide consumers a right to a refund of fees for three business days after the consumer receives early disclosures for closed-end mortgages, ensuring that consumers do not feel financially committed to a transaction before they have had a chance to review the disclosures and consider other options.

The amendments also would improve the clarity and usefulness of disclosures for open- and closed-end reverse mortgages. They would protect consumers from unfair practices in connection with reverse mortgages, including conditioning a reverse mortgage on the consumer's purchase of a financial or insurance product such as an annuity, and originating a reverse mortgage before the consumer has received independent counseling. A consumer could not be required to pay a nonrefundable fee until three business days after the consumer has received counseling. Finally, the amendments would ensure that advertisements for reverse mortgages contain balanced information and are not misleading. Many of the proposed changes to disclosures are based on consumer testing, which is discussed in more detail below.

The Consumer's Right to Rescind. The proposed revisions to Regulation Z would:

- Simplify and improve the notice of the right to rescind provided to consumers at closing;
- Revise the list of "material disclosures" that can trigger the extended right to rescind, to focus on disclosures that testing shows are most important to consumers; and

- Clarify the parties' obligations when the extended right to rescind is asserted, to reduce uncertainty and litigation costs.

Loan Modifications That Require New TILA Disclosure. The proposal would provide that new TILA disclosures are required when the parties to an existing closed-end loan secured by real property or a dwelling agree to modify key loan terms, without reference to State contract law.

- New disclosures would be required when, for example, the parties agree to change the interest rate or monthly payment, advance new money, or add an adjustable rate or other risky feature such as a prepayment penalty.
- Consistent with current rules, no new disclosures would be required for modifications reached in a court proceeding, and modifications for borrowers in default or delinquency, unless the loan amount or interest rate is increased, or a fee is imposed on the consumer.
- Certain beneficial modifications, such as "no cost" rate and payment decreases, would also be exempt from the requirement for new TILA disclosures.

Coverage Test for 2008 HOEPA Final Rule and HOEPA. The Board proposes to revise how a creditor determines whether a closed-end loan secured by a consumer's principal dwelling is a "higher-priced mortgage loan" subject to the Board's 2008 HOEPA Final Rule in § 226.35, and how points and fees are calculated for coverage under the HOEPA rules in §§ 226.32 and 226.34.

- The proposal would replace the APR as the metric a creditor compares to the average prime offer rate to determine whether the transaction is a higher-priced mortgage loan.
- Creditors instead would use a "coverage rate" that would be closely comparable to the average prime offer rate, and would not be disclosed to consumers.
- The proposal would clarify that most third party fees would not be counted towards "points and fees" that trigger HOEPA coverage.

Consumer's Right to a Refund of Fees. For closed-end loans secured by real property or a dwelling, the proposal would require a creditor to:

- Refund any appraisal or other fees paid by the consumer (other than a credit report fee), if the consumer decides not to proceed with a closed-end mortgage transaction within three business days of receiving the early disclosures (fees imposed after this three-day period would not be refundable); and
- Disclose the right to a refund of fees to consumers before they apply for a closed-end mortgage loan.

Reverse Mortgage Disclosures. The proposal would require a creditor to provide a consumer with new and revised reverse mortgage disclosures.

- Before the consumer applies for a mortgage, the creditor must provide a new two-page notice summarizing basic information and risks regarding reverse mortgages, entitled "Key Questions To Ask about Reverse Mortgage Loans;"
- Within three business days of application, and again before the reverse mortgage loan is consummated (or the account is opened, for an open-end reverse mortgage):
  - Loan cost information specific to reverse mortgages that is integrated with information required to be disclosed for all home-equity lines of credit (HELOCs) or closed-end mortgages, as applicable; and
  - A table expressing total costs as dollar amounts, in place of the table of reverse mortgage "total annual loan cost rates."

Required Counseling for Reverse Mortgages. The proposal would prohibit a creditor or other person from:

- Originating a reverse mortgage before the consumer has obtained independent counseling from a counselor that meets the qualification standards established by HUD, or substantially similar standards;
- Imposing a nonrefundable fee on a consumer (except a fee for the counseling itself) until three business days after the consumer has received counseling from a qualified counselor; and
- Steering consumers to specific counselors or compensating counselors or counseling agencies.

Prohibition on Cross-Selling for Reverse Mortgages. The proposal would:

- Prohibit a creditor or broker from requiring a consumer to purchase another financial or insurance product (such as an annuity) as a condition of obtaining a reverse mortgage; and
- Provide a "safe harbor" for compliance if, among other things, the reverse mortgage transaction is consummated (or the account is opened) at least ten calendar days before the consumer purchases another financial or insurance product.

Reverse mortgage advertising. The proposal would amend Regulation Z to revise the advertising rules for reverse mortgages so that consumers receive accurate and balanced information. For example, the proposal would require advertisements that state that a reverse mortgage "requires no payments" to clearly disclose the fact that borrowers must pay taxes and required insurance.

Other Proposed Revisions. The proposal would contain several changes to the rules for HELOCs and closed-end mortgage loans. These changes include:

- Conforming advertising rules for HELOCs to rules for closed-end mortgage loans adopted as part of the Board's 2008 HOEPA Final Rule;
- Clarifying how creditors may comply with the 2008 HOEPA Final Rule's ability to repay requirement when making short-term balloon loans;
- Clarifying that certain practices regarding prepayment of FHA loans constitute prepayment penalties for purposes of TILA disclosures and the Board's 2008 HOEPA Final Rule;
- Requiring servicers to provide consumers with the name and address of the holder or master servicer of the consumer's loan obligation, upon the consumer's written request; and
- Revising the disclosure rules related to credit insurance and debt cancellation and suspension products.

III. The Board's Review of Home-Secured Credit Rules

A. Background

The Board has amended Regulation Z numerous times since TILA simplification in 1980. In 1987, the Board revised Regulation Z to require special disclosures for closed-end ARMs secured by the borrower's principal dwelling. 52 FR 48665, Dec. 24, 1987. In 1995, the Board revised Regulation Z to implement changes to TILA by the Home Ownership and Equity Protection Act (HOEPA). 60 FR 15463, Mar. 24, 1995. HOEPA requires special disclosures and substantive protections for home-equity loans and refinancings with APRs or points and fees above certain statutory thresholds. Numerous other amendments have been made over the years to address new mortgage products and other matters, such as abusive lending practices in the mortgage and home-equity markets.

The Board's current review of Regulation Z was initiated in December 2004 with an advance notice of proposed rulemaking.[1] 69 FR 70925, Dec. 8, 2004. At that time, the Board announced its intent to conduct its

[1] The review was initiated pursuant to requirements of section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, section 610(c) of the Regulatory Flexibility Act of 1980, and section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996. An advance notice of proposed rulemaking is published to obtain preliminary information prior to issuing a proposed rule or, in some cases, deciding whether to issue a proposed rule.

review of Regulation Z in stages, focusing first on the rules for open-end (revolving) credit accounts that are not home-secured, chiefly general-purpose credit cards and retailer credit card plans. In January 2008, the Board issued final rules for open-end credit that is not home-secured. 74 FR 5244, Jan. 29, 2009. In May 2009, Congress enacted the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act), which amended TILA's provisions for open-end credit. The Board approved final rules implementing the Credit Card Act in January and June 2010 (February 2010 Credit Card Rule). 75 FR 7658, Feb. 22, 2010; 75 FR 37526, June 29, 2010.

Beginning in 2007, the Board proposed revisions to the rules for home-secured credit in several phases.

- *HOEPA.* In 2007, the Board proposed rules under HOEPA for higher-priced mortgage loans (2007 HOEPA Proposed Rules). The final rules, adopted in July 2008 (2008 HOEPA Final Rule), prohibited certain unfair or deceptive lending and servicing practices in connection with closed-end mortgages. The Board also approved revisions to advertising rules for both closed-end and open-end home-secured loans to ensure that advertisements contain accurate and balanced information and are not misleading or deceptive. The final rules also required creditors to provide consumers with transaction-specific disclosures early enough to use while shopping for a mortgage. 73 FR 44522, July 30, 2008.
- *Timing of Disclosures for Closed-End Mortgages.* In May 2009, the Board adopted final rules implementing the Mortgage Disclosure Improvement Act of 2008 (the MDIA).[2] The MDIA adds to the requirements of the 2008 HOEPA Final Rule regarding transaction-specific disclosures. Among other things, the MDIA and the final rules require early, transaction-specific disclosures for mortgage loans secured by dwellings even when the dwelling is not the consumer's principal dwelling, and requires waiting periods between the time when disclosures are given and consummation of the transaction. 74 FR 23289, May 19, 2009.
- *Examples of Rate and Payment Increases for Variable Rate Mortgage Loans.* The MDIA also requires payment examples if the interest rate or payments can change. Those provisions of the MDIA become effective January 30, 2011. As part of the August 2009 Closed-End Proposal, the Board proposed rules to implement the examples required by the MDIA. The Board has adopted an interim final rule published elsewhere in today's **Federal Register** that would include the examples and model clauses, to provide guidance to creditors until the August 2009 Closed-End Proposal is finalized.
- *Closed-End and HELOC Proposals.* In August 2009, the Board issued two proposals. For closed-end mortgages, the proposal would revise the disclosure requirements and address other issues such as loan originators' compensation. 74 FR 43232, Aug. 26, 2009. For HELOCs, the proposal would revise the disclosure requirements and address other issues such as account terminations, suspensions and credit limit reductions, and reinstatement of accounts. 74 FR 43428, Aug. 26, 2009. Public comments for both proposals were due by December 24, 2009. The Board has adopted a final rule on mortgage originator compensation, published elsewhere in today's **Federal Register.** The Board is reviewing the comments on the other aspects of the Closed-End and HELOC Proposals.
- *Final Rule on Mortgage Originator Compensation.* The Board has adopted a final rule on mortgage originator compensation, published elsewhere in today's **Federal Register.** In the August 2009 Closed-End Proposal, the Board proposed to prohibit compensation to mortgage brokers and loan officers (collectively "originators") that is based on a loan's interest rate or other terms, and to prohibit originators from steering consumers to loans that are not in consumers' interests. The final rule is substantially similar to the proposal.
- *Notice of Sale or Transfer of Mortgage Loans.* On November 20, 2009, the Board issued an interim final rule to implement amendments to TILA in the Helping Families Save Their Homes Act of 2009. 74 FR 60143, Nov. 20, 2009. The statutory amendments took effect on May 20, 2009, and require notice to consumers when their mortgage loan is sold or transferred. The Board has adopted a final rule that is published elsewhere in today's **Federal Register.**

This proposal would add or revise several rules, including rules that apply to rescission; modifications of existing closed-end loans; the method for determining whether a closed-end loan is a "higher-priced mortgage" loan; the fee restriction for early disclosures for closed-end mortgage loans; reverse mortgage disclosures; restrictions on certain acts and practices in connection with reverse mortgages; and advertising practices for reverse mortgages and HELOCs.

B. Consumer Testing for This Proposal

A principal goal for the Regulation Z review is to produce revised and improved disclosures that consumers will be more likely to understand and use in their decisions, while not creating undue burdens for creditors. Currently, Regulation Z requires creditors to provide a notice to inform the consumer about the right to rescind and how to exercise that right.

Regulation Z also provides that a consumer who applies for a reverse mortgage must receive the "standard" TILA disclosure for a HELOC or closed-end mortgage, as applicable, *and* a special disclosure tailored to reverse mortgages. In addition, the Board has recently proposed some new disclosures that were tested as part of this proposal:

- In the Board's August 2009 HELOC Proposal, the Board proposed model clauses and forms for periodic statements, and notices that would be required when a creditor terminates, suspends, or reduces a HELOC, as well as when a creditor responds to a consumer's request to reinstate a suspended or reduced line.
- In the Board's August 2009 Closed-End Proposal, the Board proposed model clauses for credit insurance, debt suspension, and debt cancellation products ("credit protection products") offered in connection with a HELOC or closed-end mortgage loan.

The Board retained ICF Macro, a research and consulting firm that specializes in designing and testing documents, to conduct consumer testing to help the Board's review of Regulation Z's disclosures.

ICF Macro worked closely with the Board to test model rescission notices, model HELOC periodic statements and other HELOC notices, model notices for credit protection products, and model forms for reverse mortgages. Each round of testing involved testing several model disclosure forms. Interview participants were asked to review model forms and provide their reactions, and were then asked a series of questions designed to test their understanding of the content. Data were collected on which elements and features of each form were most successful in providing information clearly and effectively. The findings from each round of interviews were incorporated in revisions to the model forms for the following round of testing.

Some of the key methods and findings of the consumer testing are summarized below. ICF Macro prepared reports of the results of the testing, which are available on the Board's public Web site

[2] The MDIA is contained in Sections 2501 through 2503 of the Housing and Economic Recovery Act of 2008, Public Law 110–289, enacted on July 30, 2008. The MDIA was later amended by the Emergency Economic Stabilization Act of 2008, Public Law 110–343, enacted on October 3, 2008.

along with this proposal at: *http://www.federalreserve.gov.*

Rescission and Credit Protection Testing. This consumer testing consisted of four rounds of one-on-one cognitive interviews. The goals of these interviews were to learn more about what information consumers read and understand when they receive disclosures, to research how easily consumers can find various pieces of information in these disclosures, and to test consumers' understanding of certain words and phrases. To address specific issues that surfaced during testing, the Board proposes to revise significantly the content of the model form for the right to rescind by setting forth new format requirements, and new mandatory and optional disclosures for the notice. The Board proposes new model and sample forms for the costs and features of credit protection products. The Board believes that the proposed new format rules and model forms would improve consumers' ability to identify disclosed information more readily; emphasize information that is most important to consumers; and simplify the organization and structure of required disclosures to reduce complexity and information overload.

1. Rescission Testing and Findings. The Board's goal was to develop clear and conspicuous model forms for the notice of the right to rescind that would enable borrowers to understand that they have a right to rescind the transaction within a certain period of time, and how to exercise that right. Beginning in the fall of 2009, four rounds of one-on-one cognitive interviews with a total of 39 participants were conducted in different cities throughout the United States. The consumer testing groups were comprised of participants representing a range of ethnicities, ages, educational levels, and levels of experience with home-secured credit.

Participants in three rounds of testing were shown HELOC model forms for the notice of the right to rescind, and the participants in the last round were shown closed-end model forms for the notice of the right to rescind. In the first two rounds of testing, approximately one half of the participants had some knowledge about the right to rescind prior to testing. However, in the last two rounds of testing only a few participants had some knowledge about the right to rescind.

Tabular format for rescission form. In the first round of rescission testing, the Board tested two forms, one that provided required information in a mostly narrative format based on the current model form, and another form that provided required information in a tabular form. Almost all participants in the first round commented that the information was easier to understand in a tabular form and had more success answering comprehension questions with a tabular form. This finding is consistent with previous findings in the Board's consumer testing of the HELOC disclosures, closed-end mortgage disclosures, and credit card disclosures. 74 FR 43428, Aug. 26, 2009; 74 FR 43232, Aug. 26, 2009; 75 FR 7658, Feb. 22, 2010. As a result, the remaining three rounds of testing focused on developing, testing and refining the tabular form. The forms tested in subsequent rounds differed mainly in how they described the deadline to rescind.

Tear-off portion of rescission form. Currently, consumers must be given two copies of the notice of right to rescind—one to use to exercise the right and one to retain for the consumer's records. *See* §§ 226.15(b) and 226.23(b). The current model forms contain an instruction to the consumer to keep one copy of the two notices that they receive because it contains important information regarding their right to rescind. *S*ee Model Forms G–5 through G–9 of Appendix G and Model Forms H–8 and H–9 of Appendix H. The Board tested a model form that would allow the consumer to detach the bottom part of the form and use it to notify the creditor that the consumer wishes to rescind the transaction. Most participants said that they would use the bottom part of the form to cancel the transaction. A few participants said that they would prepare and send a separate statement in addition to the form. When asked what they would do if they lost the notice and wanted to rescind, most participants said that they would call the creditor or visit their creditor's Web site to obtain another copy of the notice. Almost all participants said that they would make and keep a copy of the form if they decided to exercise the right.

Accordingly, the Board is proposing to eliminate the requirement that creditors provide two copies of the notice of the right to rescind to each consumer entitled to rescind. *See* proposed §§ 226.15(b)(1) and 226.23(b)(1), below. Instead, the Board is proposing to require creditors to provide a form at the bottom of the notice that the consumer may detach and use to exercise the right to rescind, enabling them to retain the portion explaining their rights. *See* proposed § 226.15(b)(2)(i) and (3)(viii), § 226.23(b)(2)(i) and (3)(vii).

Deadline for rescission. Consumer testing also revealed that consumers are generally unable to calculate the deadline for rescission based on the information currently required in the notice. The current model forms provide a blank space for the creditor to insert a date followed by the language "(or midnight of the third business day following the latest of the three events listed above)" as the deadline by which the consumer must exercise the right. The three events referenced are the following: (1) The date of the transaction or occurrence giving rise to right of rescission; (2) the date the consumer received the Truth in Lending disclosures; and (3) the date the consumer received the notice of the right to rescind.

Most participants had difficulty using the three events to calculate the deadline for rescission. The primary causes of errors were not counting Saturdays as a business day, counting Federal holidays as a business day, and counting the day the last event took place as the first day of the three-day period. Alternative text was tested to assist participants in calculating the deadline based on the three events; however, the text added length and complexity to the form without a significant improvement in comprehension. Participants in all rounds strongly preferred forms that provided a specific date over those that required them to calculate the deadline themselves. Thus, the Board is proposing to require a creditor to provide the calendar date on which it reasonably and in good faith expects the three business day period for rescission to expire. *See* proposed §§ 226.15(b)(3)(vii) and 226.23(b)(3)(vi).

Extended right to rescind. Consumer testing also indicated that consumers do not understand how an extended right to rescind could arise. Consumers were confused when presented with a single disclosure that provided information about the three-business-day right to rescind and an extended right to rescind. In two rounds of testing, participants were presented with a model form that contained a statement explaining when a consumer might have an extended right to rescind. However, consumer testing revealed that these explanations added length and complexity but did not increase consumer comprehension of the extended right to rescind. Nonetheless, the Board believes that some disclosure regarding the extended right to rescind is necessary for full disclosure of the consumer's rights. Thus, the Board is proposing to include a statement in the model forms that the right to cancel the transaction or occurrence giving rise to the right of rescission may extend beyond the date disclosed in the notice.

How to exercise the right of rescission. Consumer testing revealed that consumers are particularly concerned about proving that they exercised the right to rescind before the three-day period expires. Participants offered varied responses about a preferred delivery method to submit the notice of the right to rescind to the creditor: some preferred to send it by e-mail and facsimile to receive instant electronic confirmation; others preferred to send it by mail with return receipt and tracking requested. Most participants said they would not hand-deliver the notice to a bank employee unless they could be certain that the employee was authorized to receive the notice on the creditor's behalf and could provide them with a receipt.

The proposed rule would require a creditor, at minimum, to disclose the name and address to which the consumer may mail the notice of rescission. *See* proposed §§ 226.15(b)(3)(vi) and 226.23(b)(3)(v). The proposed rule would also permit a creditor to describe other methods, if any, that the consumer may use to send or deliver written notification of exercise of the right, such as overnight courier, fax, e-mail, or in person. The proposed sample forms include information for the consumer to submit the notice of rescission by mail or fax. *See* proposed Samples G–5(B) and G–5(C) of Appendix G and Sample H–8(B) of Appendix H.

2. Credit Protection Products Testing and Findings. The Board and ICF Macro also developed and tested model and sample forms for credit protection products in the last two rounds of 18 interviews—one round with 10 participants for HELOCs, and one round with 8 participants for closed-end mortgages. These forms were based on model clauses proposed in the August 2009 Closed-End Proposal. The sample form was based on samples for credit life insurance disclosures proposed in the August 2009 Closed-End Proposal.

Consumer testing revealed that consumers have limited understanding of credit protection products, and that some of the current disclosures do not adequately inform consumers of the costs and risks of these products. For example, the current regulation allows creditors to disclose the cost of the product on a unit-cost basis in certain situations. However, even when provided with a calculator, only three of 10 participants in the first round of testing could correctly calculate the cost of the product using the unit cost. When the cost was disclosed as a dollar figure tailored to the loan amount in the second round of testing, all participants understood the cost of the product. Accordingly, the proposal would require creditors to disclose the maximum premium or charge per period.

In addition, most credit protection products place limits on the maximum benefit, but the current regulation does not require disclosure of these limits. To address this problem, the Board tested a disclosure of the maximum benefit amount for a sample credit life insurance policy. In the first round of testing, only five of the 10 participants understood the disclosure of the maximum benefit when disclosed at the bottom of the form by the signature line. In the second round of testing, this information was presented in a tabular question-and-answer format and all eight participants understood the disclosure. Accordingly, the proposal would require creditors to disclose the maximum benefit amount. In addition, based on consumer testing, the proposal would require other improved disclosures, such as the disclosure of eligibility requirements.

Prior to consumer testing, the Board reviewed several disclosures for credit protection disclosures, which revealed that many disclosures were in small font, not grouped together, and in dense blocks of text. Based on the Board's experience with consumer disclosures, the Board was concerned that consumers would find these disclosures difficult to comprehend. To address these problems, the Board tested a sample credit life insurance disclosure that used 12-point font, tabular question-and-answer format, and bold, underlined text. Participants understood the content of the disclosures when presented in this format. Accordingly, the proposal would require creditors to provide the disclosures clearly and conspicuously in a minimum 10-point font, and group them together with substantially similar headings, content, and format to the proposed model forms. *See* proposed Model Forms G–16(A) and H–17(A).

3. Reverse Mortgage Disclosures Testing and Findings.

The reverse mortgage testing consisted of four focus groups and three rounds of one-on-one cognitive interviews. The goals of these focus groups and interviews were to learn about consumers' understanding of reverse mortgages, how consumers shop for reverse mortgages and what information consumers read when they receive reverse mortgage disclosures, and to assess their understanding of such disclosures. The consumer testing groups contained participants with a range of ethnicities, ages, and educational levels, and included consumers who had obtained a reverse mortgage as well as those who were eligible for one based on their age and the amount of equity in their home.

Exploratory focus groups. In January 2010 the Board worked with ICF Macro to conduct four focus groups with consumers who had obtained a reverse mortgage or were eligible for one based on their age and the amount of equity in their home. Each focus group consisted of ten people that discussed issues identified by the Board and raised by a moderator from ICF Macro. Through these focus groups, the Board gathered information on consumers' understanding of reverse mortgages, as well as the process through which consumers decide to apply for a reverse mortgage. Focus group participants also provided feedback on a sample reverse mortgage disclosure that was representative of those currently in use. Following the focus groups, ICF Macro's design team used what they learned to develop improved versions of the disclosures for further testing.

Cognitive interviews on existing disclosures. In 2010, the Board worked with ICF Macro to conduct three rounds of cognitive interviews with a total of 31 participants. These cognitive interviews consisted of one-on-one discussions with reverse mortgage consumers, during which consumers were asked to explain what they understood about reverse mortgages, their experiences and perceptions of shopping for the product, and to review samples of existing and revised reverse mortgage disclosures. In addition to learning about the information that consumers thought was important to know about reverse mortgages, the goals of these interviews were: (1) To test consumers' comprehension of the existing reverse mortgage disclosure form; (2) to research how easily consumers can find various pieces of information in the existing and revised disclosures; and (3) to test consumers' understanding of certain reverse mortgage related words and phrases.

Findings of reverse mortgage testing. Many consumer testing participants did not understand reverse mortgages or had misconceptions about them. Most participants understood that reverse mortgages are different from traditional mortgages in that traditional mortgages have to be paid back during the borrower's lifetime, while reverse mortgage borrowers receive payments from the lender based on the equity in the consumer's home. However, important misconceptions about reverse mortgages were shared by a significant number of participants. For example, some participants believed that by getting a reverse mortgage, a borrower is giving the lender ownership of his or her home. Rather than seeing a reverse mortgage as a loan that needs to be repaid, these participants believed it represented the exchange of a home for a stream of funds. Some participants also believed that if the amount owed on a reverse mortgage exceeds the value of the home, the borrower is responsible for paying the difference and that if at any point a borrower "outlives" their reverse mortgage—that is, if the equity in their home decreases to zero—they will no longer receive any payments from the lender.

Therefore, the proposal would require creditors to provide key information about reverse mortgages at the time an application form is provided to the consumer, as discussed below.

Reverse mortgage disclosures provided to consumers before application. Currently, for reverse mortgages, creditors must provide the home equity line of credit (HELOC) or closed-end mortgage application disclosures required by TILA, depending on whether the reverse mortgage is open-end or closed-end credit. These documents are not tailored to reverse mortgages.

For open-end reverse mortgages this includes a Board-published HELOC brochure or a suitable substitute at the time an application for an open-end reverse mortgage is provided to the consumer. For an adjustable-rate closed-end reverse mortgage, consumers would receive the lengthy CHARM booklet that explains how ARMs generally work. However, closed-end reverse mortgages are almost always fixed rate transactions, so consumers generally do not receive any TILA disclosures at application.

Since consumers have a number of misconceptions about reverse mortgages that are not addressed by the current disclosures, the proposal would require creditors to provide, for all reverse mortgages, a two-page document that explains how reverse mortgages work and about terms and risks that are important to consider when selecting a reverse mortgage, rather than the current documents.

Reverse mortgage disclosures provided to consumers after application. Depending on whether a reverse mortgage is open-end or closed-end credit, the current cost disclosure requirements under TILA and Regulation Z differ. All reverse mortgage creditors must provide the total annual loan cost ("TALC") disclosure at least three business days before account-opening for an open-end reverse mortgage, or consummation for a closed-end reverse mortgage. For closed-end reverse mortgages, TILA and Regulation Z require creditors to provide an early TILA disclosure within three business days after application and at least seven business days before consummation, and before the consumer has paid a fee other than a fee for obtaining a credit history. For open-end reverse mortgages, creditors must provide disclosures on or with an application that contain information about the creditor's open-end reverse mortgage plans. These disclosures do not include information dependent on a specific borrower's creditworthiness or the value of the dwelling, such as the APRs offered to the consumer, because the application disclosures are provided before underwriting takes place. Creditors are required to disclose transaction-specific costs and terms at the time that an open-end reverse mortgage plan is opened.

In addition, reverse mortgage creditors currently must disclose a table of TALC rates. The table of TALC rates is designed to show consumers how the cost of the reverse mortgage varies over time and with house price appreciation. Generally, the longer the consumer keeps a reverse mortgage the lower the relative cost will be because the upfront costs of the reverse mortgage will be amortized over a longer period of time. Thus, the TALC rates usually will decline over time even though the total dollar cost of the reverse mortgage is rising due to interest and fees being charged on an increasing loan balance.

Very few participants understood the table of TALC rates. Although participants seemed to understand the paragraphs explaining the TALC table, the vast majority could not explain how the description related to the percentages shown in the TALC table. Participants could not explain why the TALC rates were declining over time even though the reverse mortgage's loan balance was rising. Most participants thought the TALC rates shown were interest rates, and interpreted the table as showing that their interest rate would decrease if they held their reverse mortgage for a longer period of time. Participants, including those who currently have a reverse mortgage (and thus presumably received the TALC disclosure), consistently stated that they would not use the disclosure to decide whether or not to obtain a reverse mortgage. Instead, participants consistently expressed a preference for a disclosure providing total costs as a dollar amount.

Thus, the proposal would require a table that demonstrates how the reverse mortgage balance grows over time. The table expresses this information as dollar amounts rather than as annualized loan cost rates. The table would show (1) How much money would be advanced to the consumer; (2) the total of all costs and charges owed by the consumer; and (3) the total amount the consumer would be required to repay. This information would be provided for each of three assumed loan periods of 1 year, 5 years, and 10 years. Consumer testing has shown that consumers would have a much easier time understanding this table and would be much more likely to use it in evaluating a reverse mortgage than they would the TALC rates.

In addition, the proposed reverse mortgage disclosures would combine reverse-mortgage-specific information with much of the information that the Board proposed for HELOCs and closed-end mortgages in 2009. For example, the proposed disclosure would include information about APRs, variable interest rates and fees. However, because not all of the information currently required for HELOCs and closed-end mortgages is relevant or applicable to reverse mortgage borrowers, the disclosures would not contain information that would not be meaningful to reverse mortgage consumers. By consolidating the reverse mortgage disclosures, the proposal would ensure that consumers receive meaningful information in an understandable format that is largely similar for open-end and closed-end reverse mortgages, and has been designed and consumer tested for reverse mortgage consumers.

Additional testing during and after comment period. During the comment period, the Board may work with ICF Macro to conduct additional testing of model disclosures proposed in this notice.

IV. The Board's Rulemaking Authority

TILA Section 105. TILA mandates that the Board prescribe regulations to carry out the purposes of the act. TILA also specifically authorizes the Board, among other things, to:

- Issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with the act, or prevent circumvention or evasion. 15 U.S.C. 1604(a).

• Exempt from all or part of TILA any class of transactions if the Board determines that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. The Board must consider factors identified in the act and publish its rationale at the time it proposes an exemption for comment. 15 U.S.C. 1604(f).

In the course of developing the proposal, the Board has considered the views of interested parties, its experience in implementing and enforcing Regulation Z, and the results obtained from testing various disclosure options in controlled consumer tests. For the reasons discussed in this notice, the Board believes this proposal is appropriate pursuant to the authority under TILA Section 105(a).

Also, as explained in this notice, the Board believes that the specific exemptions proposed are appropriate because the existing requirements do not provide a meaningful benefit to consumers in the form of useful information or protection. In reaching this conclusion with each proposed exemption, the Board considered (1) The amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection. The rationales for these proposed exemptions are explained in part VI below.

TILA Section 129(l)(2). TILA also authorizes the Board to prohibit acts or practices in connection with:

• Mortgage loans that the Board finds to be unfair, deceptive, or designed to evade the provisions of HOEPA; and

• Refinancing of mortgage loans that the Board finds to be associated with abusive lending practices or that are otherwise not in the interest of the borrower.

The authority granted to the Board under TILA Section 129(l)(2), 15 U.S.C. 1639(l)(2), is broad. It reaches mortgage loans with rates and fees that do not meet HOEPA's rate or fee trigger in TILA section 103(aa), 15 U.S.C. 1602(aa), as well as mortgage loans not covered under that section, such as home purchase loans. Moreover, while HOEPA's statutory restrictions apply only to creditors and only to loan terms or lending practices, Section 129(l)(2) is not limited to acts or practices by creditors, nor is it limited to loan terms or lending practices. *See* 15 U.S.C. 1639(l)(2). It authorizes protections against unfair or deceptive practices "in connection with mortgage loans," and it authorizes protections against abusive practices "in connection with refinancing of mortgage loans." Thus, the Board's authority is not limited to regulating specific contractual terms of mortgage loan agreements; it extends to regulating loan-related practices generally, within the standards set forth in the statute.

HOEPA does not set forth a standard for what is unfair or deceptive, but the Conference Report for HOEPA indicates that, in determining whether a practice in connection with mortgage loans is unfair or deceptive, the Board should look to the standards employed for interpreting state unfair and deceptive trade practices statutes and the Federal Trade Commission Act (FTC Act), Section 5(a), 15 U.S.C. 45(a).[3]

Congress has codified standards developed by the Federal Trade Commission (FTC) for determining whether acts or practices are unfair under Section 5(a), 15 U.S.C. 45(a).[4] Under the FTC Act, an act or practice is unfair when it causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. In addition, in determining whether an act or practice is unfair, the FTC is permitted to consider established public policies, but public policy considerations may not serve as the primary basis for an unfairness determination.[5]

The FTC has interpreted these standards to mean that consumer injury is the central focus of any inquiry regarding unfairness.[6] Consumer injury may be substantial if it imposes a small harm on a large number of consumers, or if it raises a significant risk of concrete harm.[7] The FTC looks to whether an act or practice is injurious in its net effects.[8] The FTC has also observed that an unfair act or practice will almost always reflect a market failure or market imperfection that prevents the forces of supply and demand from maximizing benefits and minimizing costs. [9] In evaluating unfairness, the FTC looks to whether consumers' free market decisions are unjustifiably hindered. [10]

The FTC has also adopted standards for determining whether an act or practice is deceptive (though these standards, unlike unfairness standards, have not been incorporated into the FTC Act).[11] First, there must be a representation, omission or practice that is likely to mislead the consumer. Second, the act or practice is examined from the perspective of a consumer acting reasonably in the circumstances. Third, the representation, omission, or practice must be material. That is, it must be likely to affect the consumer's conduct or decision with regard to a product or service.[12]

Many states also have adopted statutes prohibiting unfair or deceptive acts or practices, and these statutes employ a variety of standards, many of them different from the standards currently applied to the FTC Act. A number of states follow an unfairness standard formerly used by the FTC. Under this standard, an act or practice is unfair where it offends public policy; or is immoral, unethical, oppressive, or unscrupulous; and causes substantial injury to consumers.[13]

In developing proposed rules under TILA Section 129(l)(2)(A), 15 U.S.C. 1639(l)(2)(A), the Board has considered the standards currently applied to the

[3] H.R. Rep. 103–652, at 162 (1994) (Conf. Rep.).

[4] *See* 15 U.S.C. 45(n); Letter from Commissioners of the FTC to the Hon. Wendell H. Ford, Chairman, and the Hon. John C. Danforth, Ranking Minority Member, Consumer Subcomm. of the H. Comm. on Commerce, Science, and Transp. (Dec. 17, 1980).

[5] 15 U.S.C. 45(n).

[6] Statement of Basis and Purpose and Regulatory Analysis, Credit Practices Rule, 42 FR 7740, 7743, Mar. 1, 1984 (*Credit Practices Rule*).

[7] Letter from Commissioners of the FTC to the Hon. Wendell H. Ford, Chairman, and the Hon. John C. Danforth, Ranking Minority Member, Consumer Subcomm. of the H. Comm. on Commerce, Science, and Transp., n.12 (Dec. 17, 1980).

[8] *Credit Practices Rule,* 42 FR at 7744.

[9] *Id.*

[10] *Id.*

[11] Letter from James C. Miller III, Chairman, FTC to the Hon. John D. Dingell, Chairman, H. Comm. on Energy and Commerce (Oct. 14, 1983) (*Dingell Letter*).

[12] *Dingell Letter* at 1–2.

[13] *See, e.g., Kenai Chrysler Ctr., Inc.* v. *Denison,* 167 P.3d 1240, 1255 (Alaska 2007) (quoting *FTC* v. *Sperry & Hutchinson Co.,* 405 U.S. 233, 244–45 n.5 (1972)); *State* v. *Moran,* 151 N.H. 450, 452, 861 A.2d 763, 755–56 (N.H. 2004) (concurrently applying the FTC's former test and a test under which an act or practice is unfair or deceptive if "the objectionable conduct … attain[s] a level of rascality that would raise an eyebrow of someone inured to the rough and tumble of the world of commerce.") (citation omitted); *Robinson* v. *Toyota Motor Credit Corp.,* 201 Ill. 2d 403, 417–418, 775 N.E.2d 951, 961–62 (2002) (quoting 405 U.S. at 244–45 n.5).

FTC Act's prohibition against unfair or deceptive acts or practices, as well as the standards applied to similar State statutes.

V. Discussion of Major Proposed Revisions

The objectives of the proposed revisions are to update and clarify the rules for home-secured credit that provide important protections to consumers, and to reduce undue compliance burden and litigation risk for creditors. The proposal would improve the clarity and usefulness of disclosures for the consumer's right to rescind. Disclosures for reverse mortgages would be improved, providing greater clarity about transactions that are complex and unfamiliar to many consumers. The proposal would also ensure that consumers receive disclosures when the creditor modifies key terms of an existing loan. Consumers would be assured the opportunity to review early disclosures for closed-end loans, before a fee is imposed that may make the consumer feel financially committed to the loan offered. Proposed changes to disclosures are based on consumer testing, to ensure that the disclosures are understandable and useful to consumers.

In considering the revisions, the Board sought to ensure that the proposal would not reduce access to credit, and sought to balance the potential benefits for consumers with the compliance burdens imposed on creditors. For example, the proposal revises the material disclosures that can trigger an extended right to rescind, to include disclosures that consumer testing has shown consumers find important in their decision making, and exclude disclosures that consumers do not find useful. The proposal also includes tolerances for certain material disclosures, to ensure that inconsequential errors do not result in an extended right to rescind.

A. The Consumer's Right to Rescind

TILA and Regulation Z provide that a consumer generally has three business days after closing to rescind certain loans secured by the consumer's principal dwelling. The consumer may have up to three years after closing to rescind, however, if the creditor fails to provide the consumer with certain "material" disclosures or the notice of the right to rescind (the "extended right to rescind").

The Notice of Rescission. Regulation Z requires creditors to provide two copies of the notice of the right to rescind to each consumer entitled to rescind the transaction, to ensure that consumers can use one copy to rescind the loan and retain the other copy with information about the right to rescind. The regulation sets forth the contents for the notice and provides model forms that creditors may use to satisfy these disclosure requirements. Creditors are required to provide the date of the transaction, the date the right expires, and an explanation of how to calculate the deadline on the form.

Consumer testing shows that consumers may have difficulty understanding the explanation of the right of rescission in the current model forms. Consumers struggled with determining when the deadline to rescind expires, based on the later of consummation, delivery of the material disclosures, or delivery of the notice of the right to rescind. Consumer testing also shows that when rescission information was presented in a certain format, participants found information easier to locate and their comprehension of the disclosures improved. In addition, creditors have raised concerns about the two-copy rule, indicting this rule can impose litigation risks when a consumer alleges an extended right to rescind based on the creditor's failure to deliver two copies of the notice.

Based on the results of consumer testing and outreach, the Board proposes to revise the content and format requirements for the notice of the right to rescind and issue revised model forms. The revised notice would include:

- The calendar date when the three-business-day rescission period expires, without the explanation of how to calculate the deadline.
- A statement that the consumer's right to cancel the loan may extend beyond the date stated in the notice and in that case, the consumer must send the notice to either the current owner of the loan or the servicer.
- A "tear off" form that a consumer may use to exercise his or her right to rescind.

In addition, the information required in the rescission notice must be disclosed:

- In a tabular format, as opposed to a narrative format used in the current model rescission forms.
- On the front side of a one-page document, separate from all other unrelated material; and
- In a minimum 10-point font.

Two-copy rule. The proposal also requires creditors to provide just one notice of the right to rescind to each consumer entitled to rescind (as opposed to two copies required under the current regulation). The proposed model rescission notice contains a "tear off" form at the bottom, so that the consumer could separate that portion to deliver to the creditor while retaining the top portion with the description of rights. The Board believes that consumers who rescind should be able to keep a written explanation of their rights, but is concerned about the litigation costs imposed by the two-copy rule. Moreover, the need for the two-copy rule seems to have diminished. Today, consumers generally have access to copy machines and scanners that would allow them to make and keep a copy of the notice if they decide to exercise the right.

Material Disclosures. A consumer's right to rescind generally does not expire until the notice of the right to rescind and the material disclosures are properly delivered. If the notice or material disclosures are never delivered, the right to rescind expires on the earlier of three years from the date of consummation or upon the sale or transfer of all of the consumer's interest in the property. Delivery of the material disclosures and notice ensures that consumers are notified of their right to rescind, and that they have the information they need to decide whether to exercise the right. Because different disclosures are given for open- and closed-end loans, TILA and Regulation Z specify certain "material disclosures" that must be given for HELOCs and other "material disclosures" that must be given for closed-end home-secured loans.

Congress added the statutory definition of "material disclosures" in 1980. Changes in the HELOC and closed-end mortgage marketplace since then have made this statutory definition outdated. Certain disclosures that are the most important to consumers in deciding whether to take out a loan (based on consumer testing) currently are not considered "material disclosures." In contrast, other disclosures that are not likely to impact a consumer's decision to enter into a loan currently are "material disclosures" under the statutory definition. The Board believes that revising the definition of "material disclosures" to reflect the disclosures that are most critical to the consumer's evaluation of credit terms would better ensure that the compliance costs related to rescission are aligned with disclosure requirements that provide meaningful benefits for consumers. Thus, the Board proposes to use its adjustment and exception authority to add certain disclosures and remove other disclosures from the definition of "material disclosures" for both HELOCs and closed-end mortgage loans. The Board also proposes to add tolerances for accuracy for certain disclosures to ensure inconsequential disclosure errors do not result in extended rescission rights.

Material Disclosures for HELOCs. In the August 2009 HELOC Proposal, the Board proposed comprehensive revisions to the account-opening disclosures for HELOCs that would reflect changes in the HELOC market. The proposed account-opening disclosures and revised model forms were developed after extensive consumer testing to determine which credit terms consumers find the most useful in evaluating HELOC plans. Consistent with the August 2009 HELOC Proposal, the staff recommends proposed revisions to the definition of material disclosures to include the information that is critical to consumers in evaluating HELOC offers, and to remove information that consumers do not find to be important. For example, the proposal revises the definition of "material disclosures" to include the credit limit applicable to the HELOC plan, which consumer testing shows is one of the most important pieces of information that consumers wanted to know in deciding whether to open a HELOC plan. The proposal also adds to the definition of "material disclosures" a disclosure of the total one-time costs imposed to open a HELOC plan (*i.e.,* total closing costs), but removes from the definition an itemization of these costs. Consumer testing shows that it is the total closing costs (rather than the itemized costs) that is more important to consumers in deciding whether to open a HELOC plan. Also, based on the results of consumer testing, the proposal would add and remove other disclosures from the definition of "material disclosures." The proposal contains tolerances for accuracy of the credit limit and the total one-time costs imposed to open a HELOC plan, to ensure inconsequential errors in these disclosures do not result in extended rescission rights.

Material Disclosures for Closed-End Mortgage Loans. In the August 2009 Closed-End Proposal, the Board proposed comprehensive revisions to the disclosures for closed-end mortgages that would reflect the changes in the mortgage market. The Board developed the proposed disclosures and revised model forms based on extensive consumer testing to determine which credit terms consumers find the most useful in evaluating closed-end mortgage loans. Consistent with the August 2009 Closed-End Proposal, this proposal revises the definition of material disclosures to include the information that is critical to consumers in evaluating closed-end mortgage offers, and to remove information that consumers do not find to be important. For example, the proposal adds to the definition of "material disclosures" information about the interest rate, the total settlement charges, and whether a loan has negative amortization or permits interest-only payments. Consumer testing shows these disclosures are critical to consumers in evaluating closed-end mortgage loans. In addition, the proposal adds disclosures of the loan amount and the loan term (*e.g.,* 30 year loan) to the definition of "material disclosures." These disclosures would replace disclosures of the amount financed, and the total and number of payments. Also, based on the results of consumer testing, other disclosures would be added to the definition of "material disclosures," such as disclosure of any prepayment penalty. The proposal retains the current rule's existing tolerances for certain material disclosures, and provides tolerances for certain of the proposed material disclosures, such as the total settlement charges, the loan amount and the prepayment penalty, to ensure inconsequential errors in these disclosures do not result in extended rescission rights.

Parties' Obligations When a Consumer Rescinds. TILA and Regulation Z set out the process for rescission. The regulation specifies that when a consumer rescinds:

• The creditor's security interest becomes void;

• The creditor must refund all interest and fees paid by the consumer; and

• After the creditor's performance, the consumer must return any money or property to the creditor.

TILA and Regulation Z allow a court to modify the process for rescission.

The rescission process during the initial three-business-day period after closing normally is straightforward, because loan funds typically have not been disbursed yet. In those cases, when a consumer provides a notice of rescission, the creditor's security interest is automatically void. Within 20 calendar days of receipt of the consumer's notice, the creditor must return any money paid by the consumer and take whatever steps are necessary to terminate its security interest.

If the consumer provides a notice of rescission after the initial three-business-day period, however, the process is problematic. In this case, the creditor has typically disbursed money or delivered property to the consumer and perfected its security interest. In addition, it may be unclear whether the consumer's right to rescind has expired. Therefore, a creditor may be reluctant to terminate the security interest until the consumer establishes that the right to rescind has not expired and the consumer can tender the loan balance. Given these circumstances, questions have been raised about: (1) Whether the creditor must respond to a notice of rescission, (2) how the parties may resolve a claim outside of a court proceeding, and (3) whether the release of the security interest may be conditioned on the consumer's tender. Both consumer advocates and creditors have urged the Board to clarify the operation of the rescission process in the extended right context. To address the concerns discussed above, the Board proposes a revised process for rescission in the extended right context.

Rescission process outside a court proceeding. The proposal provides that if a creditor receives a consumer's notice of rescission outside of a court proceeding, the creditor must send a written acknowledgement to the consumer within 20 calendars days of receipt of the notice. The acknowledgement must indicate whether the creditor will agree to cancel the transaction. If the creditor agrees to cancel the transaction, the creditor must release its security interest upon the consumer's tender of the amount provided in the creditor's written statement. Under this proposed process, consumers would be promptly and clearly informed about the status of their notice of rescission, and better prepared to take appropriate action. The proposal would ensure that if a consumer tenders the amount requested, the creditor must terminate its security interest in the consumer's home.

Rescission process in a court proceeding. The Board proposes to use its adjustment authority to ensure a clearer and more equitable process for resolving rescission claims raised in court proceedings. The sequence of rescission procedures set forth in TILA and the current regulation would seem to require the creditor to release its security interest whether or not the consumer can tender the loan balance. The Board does not believe that Congress intended for the creditor to lose its status as a secured creditor if the consumer does not return the loan balance. Therefore, the proposal provides that when the parties are in a court proceeding, the creditor is not required to release its security interest until the consumer tenders the principal balance less interest and fees, and any damages and costs, as determined by the court. The Board believes this adjustment would facilitate compliance with TILA. The majority of courts that have considered this issue condition the creditor's release of the security interest on the consumer's proof of tender.

Other Revisions Related to Rescission. The Board proposes several changes to Regulation Z that are designed to preserve the right to rescind while reducing undue litigation costs and compliance burden for creditors. These amendments would provide that:

• A consumer who exercises the extended right may send the notice to the servicer rather than the current holder, because many consumers cannot readily identify the holder;

• Certain events terminate the extended right to rescind, such as a refinancing with a new creditor;

• *Bona fide* personal financial emergencies that enable a consumer to waive the right to rescind will usually involve imminent property damage or threats to health or safety, not the imminent expiration of a discount on goods or services; and

• A consumer who guarantees a loan that is subject to the right of rescission and who pledges his principal dwelling has a right to rescind.

B. Loan Modifications That Require New TILA Disclosures

Currently Regulation Z provides that for closed-end loans, a "refinancing" by the same creditor is a new transaction that requires new TILA disclosures. Whether there is a "refinancing" depends on the parties' intent and State law. State law is largely based on court decisions that determine whether the original obligation has been satisfied and replaced, or merely modified. Reliance on State law leads to inconsistent application of Regulation Z and in some cases to loopholes. For example, some creditors simply insert a clause in all notes that the parties do not intend to refinance, thus, creditors can make significant changes to loan terms without giving TILA disclosures.

The Board proposes to require new TILA disclosures when the same creditor and the consumer agree to modify certain key mortgage loan terms. These key terms include changing the interest rate or monthly payment, advancing new debt, and adding an adjustable rate or other risky feature such as a prepayment penalty. In addition, if a fee is imposed on the consumer in connection with a modification, the modification would be a new transaction requiring new TILA disclosures. Consistent with the current rule, the proposal would exempt modifications reached in a court proceeding, and modifications for borrowers in default or delinquency, unless the loan amount or interest rate is increased, or a fee is imposed on the consumer. Certain beneficial modifications, such as rate and payment decreases, would also be exempt from the requirement for new TILA disclosures.

The proposal would result in more modifications being new transactions requiring new disclosures. For example, the Board estimates in states such as New York and Texas, where refinancings are commonly structured as modifications or consolidations to avoid State mortgage recording taxes, the number of transactions reported as refinancings could potentially double. The Board does not believe, however, that consumers located in these states would be unable to refinance their mortgage simply because creditors would be required to provide TILA disclosures under the proposal. Outreach conducted in connection with this proposal revealed that some large creditors in these states always provide consumers with TILA disclosures, regardless of whether the transaction is classified as a "refinancing" for purposes of Regulation Z.

In addition, the proposal provides that whenever a fee is imposed on a consumer in connection with a modification, including a modification for a consumer in default, a "new transaction" would occur requiring new TILA disclosures. The Board believes that including the imposition of fees as an action that triggers new disclosures is appropriate to ensure that consumers receive important information about the costs of modifying loan terms. The Board recognizes, however, that this aspect of the proposal would likely result in a significant number of modifications being deemed "new transactions," and is seeking comment on whether fees imposed on consumers in connection with modifications should include all costs of the transaction or a more narrow range of fees.

Finally, if the new transaction's APR exceeds the threshold for a "higher-priced mortgage loan" under the Board's 2008 HOEPA rules, then special HOEPA protections would apply to the new transaction. The right of rescission would likely apply to any new transaction secured by the consumer's principal dwelling, unless the transaction qualifies for a narrow exemption from rescission. Specifically, transactions are exempt from rescission if they (1) involve the original creditor who is also the current holder of the note, (2) do not involve an advance of new money, and (3) do not add a new security interest in the consumer's principal dwelling. The Board believes, however, that the potential burdens associated with the right of rescission would not discourage modifications that are in consumers' interests.

C. Improve the Coverage Test for the 2008 HOEPA Rules

In the 2008 HOEPA Final Rule, the Board adopted special consumer protections for "higher-priced mortgage loans" aimed at addressing unfair and deceptive practices in the subprime mortgage market. The Board defined a higher-priced mortgage loan as a transaction secured by a consumer's principal dwelling for which the annual percentage rate exceeds the "average prime offer rate" by 1.5 percentage points or more, for a first-lien transaction, or by 3.5 percentage points or more, for a subordinate-lien transaction.

In the August 2009 Closed-End Proposal, the Board proposed to amend Regulation Z to provide a simpler, more inclusive APR, to assist consumers in comparison shopping and reduce compliance burden. APRs would be higher under the proposal because they would include most third party closing costs. The Board noted that higher APRs would result in more loans being classified as "higher-priced" mortgage loans. More loans would be subject to HOEPA's statutory protections, and to State anti-predatory lending laws. The Board concluded, based on the limited data it had, that the proposal to improve the APR would be in consumers' interests. Comment was solicited on the potential impact of the proposed rule.

Numerous mortgage creditors and their trade associations filed comments agreeing in principle with the proposed finance charge definition but opposing the change because it would cause many prime loans to be incorrectly classified as higher-priced mortgage loans. They also stated that it would inappropriately expand the coverage of HOEPA and State laws. Consumer advocates, on the other hand, argued that any additional loans covered by the more inclusive finance charge and APR should be subject to the restrictions for HOEPA loans and higher-priced mortgage loans because they would be similarly risky to consumers. Accordingly, they argued, the increased coverage would be warranted.

To ensure that loans are not inappropriately classified as higher-priced mortgage loans, the proposal would replace the APR as the metric a creditor compares to the average prime offer rate to determine whether the transaction is a higher-priced mortgage loan. Creditors instead would use a "coverage rate" that would not be disclosed to consumers. The coverage rate would be calculated using the loan's interest rate, the points, and any other origination charges the creditor and a mortgage broker (or an affiliate of either party) retains. Thus the coverage rate would be closely comparable to the average prime offer rate. The proposal would also clarify that the more inclusive APR would have no impact on whether a loan's "points and fees" exceed the threshold for HOEPA's statutory protections. Very few HOEPA loans are made, in part because assignees of HOEPA loans are subject to all claims and defenses a consumer could bring against the original creditor. Thus, the clarification is necessary to avoid unduly restricting access to credit.

D. Consumer's Right to a Refund of Fees

TILA disclosures are intended to help consumers understand their credit terms and to enable them to compare available credit options and avoid the uninformed use of credit. In 2008, Congress amended TILA through the Mortgage Disclosure Improvement Act (the MDIA), to codify the Board's 2008 rules requiring creditors to provide good faith estimates of credit terms (early disclosures) within three business days after receiving a consumer's application for a closed-end mortgage loan, and before a fee is imposed on the consumer (other than a fee for obtaining a consumer's credit history). Thus, the MDIA helps ensure that consumers receive TILA disclosures at a time when they can use them to verify the terms of the mortgage loan offered and compare it to other available loans. The Board issued rules implementing the MDIA in May 2009. 74 FR 74989, Dec. 10, 2008.

Since the rules required by MDIA were issued, concerns have been raised that the rules' fee restriction is not sufficient to protect consumers' ability to comparison shop for credit. Under the current rule, a fee may be imposed as soon as the consumer receives the early disclosures for a closed-end mortgage loan. Thus, the consumer may feel financially committed to a transaction as soon as the disclosure is received, before having had adequate time to review it and make decisions. The fee restriction was intended to ensure that consumers are not discouraged from comparison shopping by paying application fees that cause them to feel financially committed to the transaction before costs are fully disclosed. Fees imposed at application historically have been non-refundable application fees, and include an appraisal fee and a rate lock fee, if any, which may be significant.

To address this issue, the Board proposes to provide a right to a refund of fees, if the consumer decides not to proceed with the transaction during the three business days following receipt of the early disclosures. To ensure that consumers are aware of the right, the proposal would require a brief disclosure at application. Mortgage loans are complex transactions, and thus the proposal would allow consumers time to review the terms of the loan and decide whether to go forward without feeling financially committed due to having paid an application fee. TILA and Regulation Z provide a substantially similar refund right for HELOCs.

The Board recognizes that the proposal may result in creditors refraining from imposing any fees until four days after a consumer receives the early disclosures, to avoid having to refund fees. As a result, creditors likely will not order an appraisal or lock a rate without collecting a fee from the consumer, thus, the proposal may cause a delay in processing the consumer's transaction. The right to a refund for HELOCs, however, does not seem to have caused undue delays or burdens for consumers seeking HELOCs. In addition, the proposal would guarantee that consumers have three days to consider their disclosures free of any financial constraints or pressures, whereas under RESPA, an originator may impose a nonrefundable fee on a consumer as soon as the consumer receives the early RESPA disclosure and has agreed to go forward with the transaction.

E. Reverse Mortgage Disclosures

Disclosures at Application. TILA and Regulation Z require that creditors provide, as applicable, closed-end or HELOC disclosures for reverse mortgage transactions. Currently, a creditor is required to provide a consumer with a Board-published HELOC brochure or a suitable substitute at the time an application for a HELOC is provided to the consumer. The HELOC brochure is 20 pages long and provides general information about HELOCs and how they work, as well as a glossary of relevant terms and a description of various features that can apply to HELOCs. However, it does not contain information specific to reverse mortgages. Closed-end reverse mortgages are almost always fixed-rate transactions, so consumers generally do not receive any TILA disclosures at application. For an adjustable-rate closed-end reverse mortgage, however, consumers would receive the lengthy CHARM booklet that is not tailored to reverse mortgages.

The Board proposes to use its adjustment and exception authority to replace the current HELOC and closed-end application disclosures with a new two-page document published by the Board entitled, "Key Questions to Ask about Reverse Mortgage Loans" (the "Key Questions" document). Consumer testing on reverse mortgage disclosures has shown that consumers have a number of misconceptions about reverse mortgages that are not addressed by the current disclosures. The proposal would require a creditor to provide the new "Key Questions" document that would be published by the Board for all reverse mortgages, whether open- or closed-end, or fixed- or adjustable-rate. This two-page document is intended to be a simple, straightforward and concise disclosure informing consumers about how reverse mortgages work and about terms and risks that are important to consider when selecting a reverse mortgage. The "Key Questions" document was designed based on consumers' preference for a question-and-answer tabular format, and refined in several rounds of consumer testing.

Reverse Mortgage Cost Disclosures. Depending on whether a reverse mortgage is open-end or closed-end credit, the cost disclosure requirements under TILA and Regulation Z differ. All reverse mortgage creditors must provide the TALC disclosure at least three business days before account-opening for an open-end reverse mortgage, or consummation for a closed-end reverse mortgage. For closed-end reverse mortgages, TILA and Regulation Z require creditors to provide an early TILA disclosure within three business days after application and at least seven business days before consummation, and before the consumer has paid a fee other than a fee for obtaining a credit history. If subsequent events make the early TILA disclosure inaccurate, the creditor must provide corrected disclosures before consummation. However, if subsequent events cause the APR to exceed certain tolerances, the creditor must provide a corrected disclosure that the consumer must receive at least three business days before consummation.

For open-end reverse mortgages, TILA and Regulation Z require creditors to provide disclosures on or with an application that contains information about the creditor's open-end reverse mortgage plans. These disclosures do not include information dependent on a specific borrower's creditworthiness or the value of the dwelling, such as the

APRs offered to the consumer, because the application disclosures are provided before underwriting takes place. Creditors are required to disclose transaction-specific costs and terms at the time that an open-end reverse mortgage plan is opened.

Content of proposed reverse mortgage disclosures. The Board proposes three consolidated reverse mortgage disclosure forms: (1) An early disclosure for open-end reverse mortgages, (2) an account-opening disclosure for open-end reverse mortgages, and (3) a closed-end reverse mortgage disclosure. The proposal would ensure that consumers receive meaningful information in an understandable format using forms that are designed, and have been tested, for reverse mortgage consumers. Rather than receive two or more disclosures under TILA that come at different times and have different formats, consumers would receive all the disclosures in a single format that is largely similar regardless of whether the reverse mortgage is structured as open-end or closed-end credit. The proposal would also facilitate compliance with TILA by providing creditors with a single set of forms that are specific to and designed for reverse mortgages, rather than requiring creditors to modify and adapt disclosures designed for forward mortgages.

For reverse mortgages, the proposal would require creditors to provide either:

- The "early" open-end reverse mortgage disclosure within three business days after application, and the account-opening disclosure at least three business days before account opening; or
- The closed-end reverse mortgage disclosures within three business days after application and again at least three business days before consummation.

The timing of these disclosures would generally match the proposed timing requirements in the Board's 2009 HELOC and closed-end mortgage proposals.

Information about reverse mortgage total costs. Currently, Regulation Z requires reverse mortgage creditors to disclose a table of TALC rates. The table of TALC rates is designed to show consumers how the cost of the reverse mortgage varies over time and with house price appreciation. Generally, the longer the consumer keeps a reverse mortgage the lower the relative cost will be because the upfront costs of the reverse mortgage will be amortized over a longer period of time. Thus, the TALC rates usually will decline over time even though the total dollar cost of the reverse mortgage is rising.

As discussed above, very few consumers in testing understood the table of TALC rates. Although participants seemed to understand the explanation accompanying the TALC table, the vast majority could not explain how the explanation related to the percentages shown in the TALC table. Consumers, including those who currently have a reverse mortgage (and thus presumably received the TALC disclosure), consistently stated that they would not use the disclosure to decide whether or not to obtain a reverse mortgage. Instead, consumers consistently expressed a preference for a disclosure providing total costs as a dollar amount.

For these reasons, the Board proposes to use its exception and exemption authority to propose replacing the TALC rates disclosure with other information that is likely to be more meaningful to consumers. The proposal would require a table that demonstrates how the reverse mortgage balance grows over time. The table expresses this information as dollar amounts rather than as annualized loan cost rates. Under the proposal, the creditor must provide three items of information: (1) The sum of all advances to and for the benefit of the consumer; (2) the sum of all costs and charges owed by the consumer; and (3) the total amount the consumer would be required to repay. This information must be provided for each of three assumed loan periods of one year, 5 years, and 10 years. Consumer testing has shown that consumers would have a much easier time understanding this table and would be much more likely to use it in evaluating a reverse mortgage.

Other reverse mortgage cost information. The proposed reverse mortgage disclosures would combine reverse-mortgage-specific information with much of the information that the Board proposed for HELOCs and closed-end mortgages in 2009. For example, the proposed disclosure would include information about APRs, variable interest rates and fees. However, because not all of the information currently required for HELOCs and closed-end mortgages is relevant or applicable to reverse mortgage borrowers, the Board proposes to use its exception and exemption authority to remove or replace disclosures that are not likely to provide a meaningful benefit to reverse mortgage consumers. For example, TILA and Regulation Z require HELOC disclosures to state whether a grace period exists within which any credit extended may be repaid without incurring a finance charge. For reverse mortgage borrowers who do not make regular payments to the lender, such a disclosure is unlikely to be meaningful and may confuse consumers into thinking that some type of regular repayment is required.

Open-end reverse mortgage account-opening disclosures. For open-end reverse mortgages, the proposal would require creditors to provide disclosures at least three business days before account opening, consistent with the current rule for the TALC disclosure. The content of the open-end reverse mortgage account-opening disclosures would be largely similar to the early disclosure, but would contain additional information about fees, consistent with the Board's 2009 HELOC proposal.

F. Requirement for Reverse Mortgage Counseling

Prospective borrowers of FHA-insured reverse mortgages, known as Home Equity Conversion Mortgages (HECMs), must receive counseling before obtaining a HECM. While proprietary reverse mortgage creditors have in the past routinely required counseling for borrowers from HUD-approved counselors, Federal law does not require such counseling for proprietary reverse mortgages. Recently, concerns have surfaced about abusive practices in proprietary reverse mortgages. Reverse mortgages are complex transactions, and even sophisticated consumers seeking reverse mortgages may not be sufficiently aware of the risks and obligations of reverse mortgages solely through disclosures provided during the origination process. Although the proposed rule would improve TILA's reverse mortgage disclosures, the Board believes that the complexity of and risks associated with reverse mortgages warrant added consumer protections. Home equity is a critical financial resource for reverse mortgage borrowers, who generally must be 62 years of age or older. Reverse mortgage borrowers also risk foreclosure if they do not clearly understand important facts about reverse mortgages.

To address these concerns, the proposal would prohibit a creditor or other person from originating a reverse mortgage before the consumer has obtained counseling from a counselor or counseling agency that meets the counselor qualification standards established by HUD, or substantially similar standards. The proposed rule would apply to HECMs and proprietary reverse mortgages. To confirm that the consumer received the required counseling, creditors could rely on a certificate of counseling in a form approved by HUD, or a substantially similar written form. In addition, the proposal would prohibit a creditor or any other person from imposing a nonrefundable fee (except a fee for counseling) on a consumer until three business days after the consumer has obtained counseling. Under the proposal, creditors or others could not steer consumers to particular counselors, or compensate counselors or counseling agencies. These rules would be proposed under the Board's HOEPA authority to prohibit unfair or deceptive acts or practices in connection with mortgage loans.

G. Conditioning a Reverse Mortgage on the Purchase of Other Financial or Insurance Products

Reverse mortgage originators often refer reverse mortgage consumers to third parties that offer the consumers other products or services. Some originators affirmatively require the consumer to purchase another financial product to obtain the reverse mortgage. Originators who refer consumers to providers of financial and other products may receive referral fees, creating strong incentives to encourage reverse mortgage consumers to purchase additional products regardless of whether they are appropriate.

Products often cited as being required as part of a reverse mortgage transaction include annuities, certificates of deposit (CDs) and long-term care insurance. These may be beneficial products for many consumers; however purchase of these and other products may harm consumers who do not understand them. For example, some reverse mortgage consumers have reportedly been sold annuities scheduled to mature after their life expectancy. Further, an annuity may yield at a lower rate of interest than the reverse mortgage used to pay for it. Reverse mortgage borrowers who become aware of these drawbacks may face high fees for early withdrawal or cancellation of the annuity.

Reverse mortgage borrowers often have limited options for obtaining additional funds; for some, a reverse mortgage may be the resource of last resort. These consumers may be forced to accept a requirement that they use reverse mortgage funds to purchase another product, even if it has little benefit. In addition, reverse mortgages are complex loan products whose requirements and characteristics tend to be unfamiliar even to the most sophisticated consumers. Thus, many consumers may be easily misled or confused about the costs of other products and services and the potential downsides to tapping their home equity to pay for them. Moreover, consumers can obtain the benefits from other products and services by voluntarily choosing them.

The Board proposes anti-tying rules specific to reverse mortgages to ensure that all reverse mortgage originations are covered—including both HECMs and proprietary products, as well as reverse mortgages originated by depository and nondepository institutions. These rules would be proposed under the Board's HOEPA authority to prohibit unfair or deceptive acts or practices in connection with mortgage loans.

The proposal would prohibit a creditor or loan originator from requiring a consumer to purchase another financial or insurance product as a condition of obtaining a reverse mortgage. A creditor or loan originator will be deemed not to have required the purchase of another product if:

- The consumer receives the "Key Questions to Ask about Reverse Mortgage Loans" document; and
- The reverse mortgage is consummated (or the account is opened for a HELOC) at least ten days before the consumer purchases another financial or insurance product.

The proposal would define "financial or insurance product" to include both bank products, such as loans and certificates of deposit, and non-bank products, such as annuities, long-term care insurance, securities, and other nondepository investment products. The proposal expressly exempts from the definition of "financial or insurance product" savings and certain other deposit accounts established to disburse reverse mortgage proceeds, as well as products and services intended to protect the creditor's or insurer's investment, such as mortgage insurance, property inspection services, and appraisal or property valuation services.

H. Reverse Mortgage Advertising

Regulation Z currently contains rules that apply to advertisements of HELOCs and closed-end mortgages, including reverse mortgages. The advertisement of rates is addressed in these rules. In addition, advertisements that contain certain specified credit terms, including payment terms, must include additional advertising disclosures, such as the APR. For closed-end mortgages, including reverse mortgages, Regulation Z prohibits seven misleading or deceptive practices in advertisements. For example, Regulation Z prohibits use of the term "fixed" in a misleading manner in advertisements where the rate or payment is not fixed for the full term of the loan.

Reverse mortgage advertisements generally focus on special features of reverse mortgages, such as the fact that regular payments of principal and interest are not required. For this reason, the proposal contains additional advertising requirements specific to reverse mortgages that supplement, rather than replace, the general advertising requirements for open-end or closed-end credit.

The proposal would require that a reverse mortgage advertisement disclose clarifying information if the advertisement contains certain statements that are likely to mislead or confuse consumers. For example, a clarifying statement would be required for:

- Advertisements stating that a reverse mortgage "requires no payments;"
- Advertisements stating that a consumer need not repay a reverse mortgage "during your lifetime;" and
- Advertisements stating that a consumer "cannot lose" or there is "no risk" to a consumer's home with a reverse mortgage.

VI. Section-by-Section Analysis

Section 226.1 Authority, Purpose, Coverage, Organization, Enforcement, and Liability

Section 226.1(d) provides an outline of Regulation Z. The Board proposes to revise § 226.1(d)(5) and (7) to reflect the proposed changes to the requirements for reverse mortgages.

1(d) Organization

1(d)(5)

The Board provided in the 2008 HOEPA Final Rule a staff comment to clarify how the effective date of October 1, 2009 would apply for each of the rule's provisions. *See* comment 1(d)(5)–1. The Board is proposing to make two changes to comment 1(d)(5)–1. One change would provide that a radio advertisement occurs on the date it is broadcast, and the other would conform comment 1(d)(5)–1 to changes proposed to § 226.20(a).

Advertising rules. The comment provides that the Board's advertising rules adopted as part of the 2008 HOEPA Final Rule would apply to advertisements that occur on and after the effective date. It then states as an example that "a radio ad occurs on the date it is first broadcast." The Board has been asked whether this example means that, as long as a radio advertisement was first broadcast prior to October 1, 2009, it then may be rebroadcast indefinitely without the HOEPA Final Rule's advertising provisions ever applying to that advertisement. The Board did not intend this result but, rather, intended the new advertising rules to apply to all radio advertisements that are broadcast on or after the effective date, regardless of whether they happen to have been broadcast prior to the effective date.

This proposal would remove the word "first" from the language referenced above in comment 1(d)(5)–1. Thus, under proposed comment 1(d)(5)–1, a radio advertisement broadcast on or after October 1, 2009 would be subject to the new advertisement rules, regardless of whether it is the first time the advertisement has been broadcast. This revision would prevent possible misinterpretation of the example about the effective date of the advertising rules as they apply to radio advertisements.

Conforming amendments for proposed § 226.20(a). Existing comment 1(d)(5)–1 provides that the 2008 HOEPA protections would apply to a "refinancing" of an existing closed-end mortgage loan under § 226.20(a), if the creditor receives an application for the refinancing on or after the effective date. The 2008 HOEPA rules would not apply, however, if the same creditor and consumer merely "modify" an existing obligation after the effective date. Under current § 226.20(a), when the same creditor and consumer modify the terms of an existing closed-end mortgage loan, there is no refinancing or new transaction unless the existing loan is satisfied and replaced under State law.

As discussed under § 226.20(a) below, the Board is proposing to amend § 226.20(a) to provide that a new transaction would occur when the same creditor and the consumer agree to change certain key terms of an existing closed-end loan secured by real property or a dwelling, regardless of State law. As noted in the discussion under § 226.20(a) below, the proposal would increase significantly the number of modifications that are new transactions. A modification that is a new transaction under proposed § 226.20(a)(1) also would be subject to the 2008 HOEPA rules in § 226.35, if the new transaction is a "higher-priced mortgage loan" under § 226.35(a). Thus, the Board expects that the number of transactions that are subject to § 226.35 will increase but believes that the burdens associated with increased coverage are offset by the consumer protections in § 226.35. The Board solicits comment on the extent of any increased coverage under § 226.35, and whether the costs of complying with § 226.35 would unduly restrict consumers' ability to modify their loans.

Section 226.2 Definitions and Rules of Construction

2(a) Definitions

2(a)(6) Business Day

Currently, § 226.2(a)(6) contains two definitions of business day. Under the general definition, a business day is a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. *See* comment 2(a)(6)–1. For some purposes, however, a more precise definition of business day applies: all calendar days except Sundays and specified Federal legal holidays for purposes of determining the three-business-day right of rescission under §§ 226.15 and 226.23, as well as when disclosures are deemed received, or by when disclosures must be received, for certain mortgage transactions under §§ 226.19(a)(1)(ii), 226.19(a)(2), and 226.31(c) and for private education loans under § 226.46(d)(4). In addition, the Board has proposed to apply this more precise definition of business day to determining when consumers have received disclosures required under proposed §§ 226.5b(e) and 226.9(j)(2). *See* 74 FR 43428, 43575, 43593, 43608, Aug. 26, 2009.

Nonrefundable fees for closed-end mortgages. Section 226.19(a)(1)(i) currently requires a creditor to provide good faith estimates of credit terms (early disclosures) within three business days after the creditor receives a consumer's application for a closed-end mortgage that is secured by the consumer's dwelling and subject to RESPA. Under the August 2009 Closed-End Proposal, § 226.19(a)(1)(iv) would require that any fee paid within three business days after a consumer receives the early disclosures be refundable during that period, as discussed in detail below. For purposes of proposed § 226.19(a)(1)(iv), the more precise definition of business day would apply. The Board therefore proposes to revise § 226.2(a)(6) and comment 2(a)(6)–2 to reflect the use of the more precise definition in determining when the refund period ends.

Reverse mortgages. For reverse mortgages, the proposal would use the general definition of business day for purposes of providing the early open-end reverse mortgage disclosure within three business days after application. The Board proposes to revise § 226.2(a)(6) and comment 2(a)(6)-2 to use the more precise definition of business day for purposes of the requirement in § 226.33 that creditors provide disclosures for open-end reverse mortgages at least three business days before account opening. This proposal would also apply the more precise definition of business day to the proposed prohibition on imposing a nonrefundable fee until three business days after a reverse mortgage consumer has obtained required counseling. *See* proposed § 226.40(b)(2) and accompanying commentary. This prohibition is discussed in greater detail below, in the section-by-section analysis of § 226.40(b)(2).

2(a)(11) Consumer

Rescission

TILA and Regulation Z provide that, unless the transaction is exempted, a consumer has a right to rescind a consumer credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling. TILA Section 125(a), (e); 15 U.S.C. 1635(a), (e); § 226.23(a), (f). Accordingly, for purposes of rescission, Regulation Z defines a consumer as "a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest." Section 226.2(a)(11).

Comment 2(a)(11)–1 states that guarantors, endorsers, and sureties (hereinafter, "guarantors") "are not generally consumers for purposes of the regulation, but they may be entitled to rescind under certain circumstances." A number of questions have been raised about the circumstances under which a guarantor may be entitled to rescind. In particular, the Board is aware of uncertainty regarding when a guarantor who has pledged his principal dwelling as security for repayment of another person's consumer credit obligation would have the right to rescind. For example, creditors have asked if a guarantor pledging his principal dwelling as additional collateral for a consumer's residential mortgage transaction would have the right to rescind. The Board notes the holding of one court that a guarantor giving a security interest in her principal dwelling as additional collateral for her nephew's consumer credit transaction to purchase an automobile and primarily secured by the automobile has the right to rescind.[14]

The Board's proposal. The Board proposes to revise comment 2(a)(11)–1 to specify the circumstances under which a guarantor has the right of rescission. The proposed comment clarifies that a guarantor who has pledged his principal dwelling as

[14] *See, e.g., Soto* v. *PNC Bank,* 221 B.R. 343 (Bankr. E.D. Pa. 1998).

security for repayment of a borrower's consumer credit obligation would have the right to rescind when: (1) the borrower has the right to rescind because he or she is a natural person to whom consumer credit is offered or extended and in whose principal dwelling a security interest is or will be retained or acquired; and (2) the guarantor pledges his or her principal dwelling as additional security for the consumer credit transaction, and personally guarantees the borrower's repayment of the consumer credit transaction. The Board believes that in the circumstances outlined in the proposed comment, TILA affords the guarantor the right to rescind, just as the borrower on the underlying obligation has a right to rescind.

Where the underlying transaction is not a consumer credit transaction, TILA Section 125(a) and §§ 226.15 and 226.23 do not provide a guarantor with the right to rescind. 15 U.S.C. 1635(a). TILA Section 125(a) provides a right to rescind "in the case of a *consumer credit transaction* * * * in which a security interest * * * is or will be retained or acquired in any property which is used as the principal dwelling of the person to whom credit is extended.* * *" 15 U.S.C. 1635(a) (emphasis added). Regulation Z applies to consumer credit (defined in § 226.2(a)(12) as credit offered or extended to a consumer primarily for personal, family, or household purposes), not business credit. Section 226.3(a). Accordingly, comments 15–1 and 23–1 state that the right of rescission does not apply to a business-purpose loan, even though the loan is secured by the borrower's principal dwelling.

In addition, a guarantor would not have a right to rescind where the underlying consumer credit transaction is not secured by the borrower's principal dwelling, as in the case of an automobile loan secured only by the automobile, or an unsecured education loan. With these loans, no security interest is taken in "the principal dwelling *of the person to whom credit is extended*," as required by TILA Section 125(a) for the right to rescind to apply to a transaction. 15 U.S.C. 1635(a) (emphasis added). The guarantor's pledge of his or her own principal dwelling as collateral for the consumer credit transaction is irrelevant under the statute, because the guarantor is not "the person to whom credit is extended."

Similarly, a guarantor does not have a right to rescind where the underlying consumer credit transaction is a loan used by the borrower to purchase his or her principal dwelling and is secured by that principal dwelling. The right of rescission does not arise in these transactions because they are "residential mortgage transactions." TILA Section 125(e)(1), 15 U.S.C. 1635(e)(1); §§ 226.15(f)(1) and 226.23(f)(1). Congress exempted residential mortgage transactions from rescission. It would be impracticable to unwind home-purchase transactions and return all parties, including the home seller, to the financial status each occupied before the transaction occurred. Thus, neither the borrower to whom the consumer credit is extended, nor the guarantor who has pledged his own principal dwelling as security for that extension of credit, has the right to rescind such a transaction.

A guarantor who personally guarantees and offers his home as security for a rescindable consumer credit transaction should have the right to rescind because the guarantor is in a situation very similar to that of the borrower. Both the borrower and the guarantor are obligors who are liable on the promissory note, a security interest is taken in both the borrower's and the guarantor's principal dwelling, and the consumer credit transaction is not exempt from rescission. While the Board believes that it would be unusual for a creditor to accept the pledge of a guarantor's home without a personal guarantee, the Board solicits comment on the frequency of such a practice.

Revocable Living Trusts

As discussed in detail below, under § 226.3(a), the Board is proposing to clarify that credit extensions to revocable living trusts for a consumer purpose are consumer credit, even though a trust is not a natural person. Accordingly, proposed comment 2(a)(11)–3 includes clarification that, therefore, such transactions are considered credit extended to a consumer.

Reverse Mortgages

The Board proposes to adopt an alternative definition of consumer for purposes of the counseling requirement for reverse mortgages under proposed § 226.40(b). The Board proposes to add a sentence to § 226.2(a)(11) cross-referencing the definition of consumer in proposed § 226.40(b)(7). For clarity, proposed comment 2(a)(11)–4 restates the proposed § 226.40(b)(7) definition of consumer: for purposes of the counseling requirements under § 226.40(b) for reverse mortgages subject to § 226.33, with one exception, a consumer includes any person who, at the time of origination of a reverse mortgage subject to § 226.33, will be shown as an owner on the property deed of the dwelling that will secure the applicable reverse mortgage. For purposes of the prohibition on imposing nonrefundable fees in connection with a reverse mortgage transaction until after the third business day following the consumer's completion of counseling (proposed § 226.40(b)(2)(i)), however, the term consumer includes only persons on the property deed who will be obligors on the applicable reverse mortgage. This proposal is discussed in greater detail in the section-by-section analysis to § 226.40(b)(7), below.

2(a)(25) Security Interest

Current § 226.2(a)(25) defines "security interest" and comment 2(a)(25)–6 provides guidance on the disclosure of a security interest. With respect to rescission, current comment 2(a)(25)–6 provides that the acquisition or retention of a security interest in the consumer's principal dwelling may be disclosed in a rescission notice with a general statement such as the following: "Your home is the security for the new transaction." *See also* §§ 226.15(b)(1) and 226.23(b)(1)(i). The Board proposes to delete this provision in comment 2(a)(25)–6 as obsolete. As discussed in more detail in the section-by-section analysis to proposed §§ 226.15(b) and 226.23(b), the rescission notice no longer would include a disclosure of "the retention or acquisition of a security interest in the consumer's principal dwelling." Based on consumer testing, the Board is concerned that the current language in comment 2(a)(25)–6 and model rescission forms in Appendices G and H for disclosure of the retention or acquisition of a security interest might not alert consumers that the creditor has the right to take the consumer's home if the consumer defaults. To clarify the significance of the security interest, for rescission notices related to HELOC accounts, proposed § 226.15(b)(3)(ii) requires a creditor to provide a statement that the consumer could lose his or her home if the consumer does not repay the money that is secured by the home. Similarly, for rescission notices related to closed-end mortgage transactions, proposed § 226.23(b)(3)(i) requires a creditor to provide a statement that the consumer could lose his or her home if the consumer does not make payments on the loan. Guidance for how to meet these proposed disclosure requirements is contained in proposed Samples G–5(B) and G–5(C) for HELOC accounts, and in proposed Model Forms H–8(A) and H–9 and Sample H–8(B) for closed-end mortgage transactions.

Section 226.3 Exempt Transactions

3(a) Business, Commercial, Agricultural, or Organizational Credit

Generally, TILA and Regulation Z cover extensions of credit to a consumer, which is defined as a natural person. *See* TILA Section 103(h), 15 U.S.C. 1602(h); § 226.2(a)(11). Extensions of credit to other than a natural person, such as an organization, are exempt from coverage. *See* TILA Sections 103(c), 104(1), 15 U.S.C. 1602(c), 1603(1); § 226.3(a). Thus, credit extended to a trust is exempt from coverage, because a trust is considered an organization, not a natural person. *See* TILA Section 103(c), 15 U.S.C. 1602(c). However, under Regulation Z, credit extended to a land trust for consumer purposes is considered credit extended to a natural person rather than to an organization, and thus is covered by the regulation. *See* comment 3(a)–8. In a land trust transaction, the creditor extends credit to the land trust, which has been created by a natural person to purchase real property, borrow against equity, or refinance a loan already secured by the property. Assuming that these transactions are for personal, family, or household purposes, they are substantively the same as other consumer credit transactions covered by the regulation. *See* comment 3(a)–8.

Concerns have been raised about whether Regulation Z should apply to loans made to revocable living ("intervivos") trusts in the same manner as it applies to land trusts. Revocable living trusts have become popular estate planning devices for consumers. A natural person creates the revocable living trust (also referred to as the "settlor" of the trust) and is also a beneficiary and trustee of the trust. Title to the personal and real property of the settlor/beneficiary/trustee is held by the revocable living trust. A creditor may extend credit to the revocable living trust (the borrower) to purchase personal or real property, borrow against equity, or refinance an existing secured or unsecured loan. Upon the settlor's death, new persons become beneficiaries of the trust—usually the settlor's heirs.

Many creditors treat loans made to revocable living trusts for consumer purposes and secured by real property as consumer credit transactions subject to TILA and Regulation Z. At least one court has held that the refinancing of a loan originally made to a natural person and secured by that person's principal dwelling, which was later transferred to a revocable living trust that refinanced the loan, was a rescindable consumer credit transaction.[15]

The Board believes that credit extended to a revocable living trust should be subject to Regulation Z because in substance (if not form) consumer credit is being extended. Accordingly, the Board proposes to revise comments 2(a)(11)–3 and 3(a)–8 to clarify that credit extended to revocable living trusts for consumer purposes is considered credit extended to a natural person and, thus, to a consumer.

Section 226.4 Finance Charge

4(a) Definition

Current comment 4(a)(1)–2 clarifies that an annuity required by the creditor in a reverse mortgage transaction is a finance charge. As discussed more fully in the section-by-section analysis to § 226.40 below, the Board is proposing to prohibit creditors from requiring the purchase of an annuity with a reverse mortgage. Accordingly, the Board is proposing to remove this comment about required annuity purchases.

4(d)(1) and (3) Voluntary Credit Insurance Premiums; Voluntary Debt Cancellation and Debt Suspension Fees

Under TILA and Regulation Z, a premium or other charge for credit insurance or debt cancellation or debt suspension coverage (collectively, "credit protection products") is a finance charge if the insurance or coverage is written in connection with a credit transaction. TILA Section 106(a)(5), 15 U.S.C. 1605(a)(5); § 226.4(b)(7) and (b)(10). However, under TILA and Regulation Z, the creditor may exclude the premium or charge from the finance charge if: (1) The insurance or coverage is not required by the creditor and the creditor discloses this fact in writing; (2) the creditor discloses the premium or charge for the initial term of the insurance or coverage; (3) the creditor discloses the term of the insurance or coverage, if the term is less than the term of the credit transaction; (4) the creditor provides a disclosure for debt suspension coverage, as applicable; and (5) the consumer signs or initials an affirmative written request for the insurance or coverage after receiving the required disclosures. TILA Section 106(b), 15 U.S.C. 1605(b); § 226.4(d)(1) and (d)(3).

In the August 2009 Closed-End Proposal, the Board proposed several changes to the finance charge, the conditions for exclusion from the finance charge, and the required disclosures. First, under proposed § 226.4(g), the provisions of § 226.4(d) would not apply to closed-end credit transactions secured by real property or a dwelling, so the premium or charge for a credit protection product written in connection with the credit transaction would be included in the finance charge for the credit transaction whether or not it was voluntary. Under proposed § 226.38(h), however, a creditor would still be required to provide the credit protection product disclosures required under § 226.4(d)(1) and (d)(3). Second, concerns about eligibility requirements were addressed in proposed § 226.4(d)(1)(iv) and (d)(3)(v), which would require the creditor to determine at the time of enrollment that the consumer meets any applicable age or employment eligibility criteria for insurance or coverage. The creditor would be required to make this determination in order to exclude the premium or charge from the finance charge for the credit transaction. Finally, based on consumer testing, revised disclosures were proposed to address concerns about disclosure of the voluntary nature, costs, and eligibility requirements of the product. *See* proposed Model Clauses and Samples G–16(C), G–16(D), H–17(C), and H–17(D) in Appendices G and H, 74 FR 43232, 43338, 43348, Aug. 26, 2009.

Based on comments to the August 2009 Closed-End Proposal and the Board's review of creditor solicitations and disclosures for credit protection products, the Board now proposes changes to the timing, format, and content of disclosures required under § 226.4(d). These disclosures would be necessary to satisfy the disclosure requirements of proposed § 226.6(a)(5)(i) for HELOCs, § 226.6(b)(5)(i) for open-end credit that is not home-secured, § 226.18(n) for closed-end credit that is not home-secured, and § 226.38(h) for closed-end mortgages. These disclosures would be required whether the credit protection product was optional or required. As discussed more fully in the section-by-section analyses for proposed § 226.38 in the August 2009 Closed-End Proposal and for proposed §§ 226.6 and 226.18 below, the Board is proposing to use its TILA Section 105(a) authority to require these disclosures for credit protection products that are required in connection with the credit transaction to ensure that consumers are fully informed of the costs and risks of these products. The disclosures and requirements are discussed more fully in the section-by-section analyses below for §§ 226.6(a)(5)(i), 226.6(b)(5)(i), and 226.18(n). In the August 2009 Closed-

[15] *See Amonette* v. *Indymac Bank, F.S.B.*, 515 F. Supp. 2d 1176 (D. Haw. 2007).

End Proposal, the credit protection product disclosures were listed in proposed § 226.38(h). In the final rule, the list of these disclosures would be consolidated in § 226.4(d)(1) and (d)(3), and § 226.38(h) would simply provide a cross-reference to § 226.4(d)(1) and (d)(3).

Timing. Under a final rule for credit cards issued in January 2009 (January 2009 Credit Card Rule), a credit protection product sold before or after the opening of an open-end (not home-secured) plan would be considered "written in connection with the credit transaction." *See* comments 4(b)(7) and (b)(8)–2 and 4(b)(10)–2; 74 FR 5244, 5459, Jan. 29, 2009. (The January 2009 Credit Card Rule was withdrawn as of February 22, 2010, but comments 4(b)(7) and (b)(8)–2 and 4(b)(1)–2 were retained in a final rule published separately that same day (February 2010 Credit Card Rule). 75 FR 7925 and 7658, 7858–7859, Feb. 22, 2010.) The August 2009 Closed-End Proposal would apply this same rule to HELOCs. *See* proposed comments 4(b)(7) and (b)(8)–2 and 4(b)(10)–2; 74 FR 43232, 43370, Aug. 26, 2009. That is, to exclude a premium or charge from the finance charge, a creditor would have to comply with § 226.4(d) if the credit protection product was sold before or after the opening of an open-end plan (whether or not it was home-secured). Thus, for closed-end credit, a creditor would have to comply with § 226.4(d) if the creditor protection product was sold before—but not after—consummation. To clarify these requirements, proposed § 226.4(d)(1) and (d)(3) and comment 4(d)–2 would state that a creditor must fulfill the conditions of § 226.4(d) before the consumer enrolls in the insurance or coverage "written in connection with the credit transaction." Comment 4(d)–2 would also cross-reference comments 4(b)(7) and (b)(8)–2 and 4(b)(10)–2 for a discussion of when insurance or coverage is "written in connection with the credit transaction." Comment 4(d)–6 would be revised to clarify that if the premium is not imposed by the creditor in connection with the credit transaction, it is not covered by § 226.4.

4(d)(1)(i)

Format. Currently, Regulation Z does not mandate the format of the disclosures required under § 226.4(d) and does not provide model forms or samples specific to the disclosures for credit protection products. The Board's review of several disclosures for credit protection products revealed that many disclosures were in small font, not grouped together, and in dense blocks of text. For example, one creditor provided credit protection product disclosures in 6-point font on the back of an enrollment form, separate from the signature line, and with multiple Federal and State disclosures in dense blocks of text. Although the August 2009 Closed-End Proposal provided model clauses and a credit life insurance sample, there was no model form with a specific format. In addition, although the proposal included a credit life insurance sample, commenters requested separate samples for debt cancellation and debt suspension products.

To address these problems, the Board tested a sample credit life insurance disclosure that used 12-point font, tabular and question-and-answer format, and bold and underlined text. Participants understood the content of the disclosure when presented in this format. The Board also worked with its consultant to develop samples for debt cancellation and debt suspension products. Accordingly, the Board proposes to revise § 226.4(d)(1)(i) and (d)(3)(i) to require the creditor to provide clearly and conspicuously in a minimum 10-point font the disclosures, which must be grouped together and substantially similar in headings, content, and format to Model Forms G–16(A) or H–17(A) in Appendix G or H. Proposed § 226.4(d)(1)(i)(D) would require several disclosures in a tabular and question-and-answer format. Also, samples for credit life insurance, disability debt cancellation coverage, and unemployment debt suspension coverage are proposed at Samples G–16(B), (C) and (D), and H–17(B), (C) and (D), respectively.

4(d)(1)(i)(D)(*1*)

Need for product. To address concerns about the costs and benefits of the product relative to traditional life insurance, the August 2009 Closed-End Proposal required the creditor to provide the following statement: "If you have insurance already, this policy may not provide you with any additional benefits." Several industry trade associations, banks, community banks, and credit protection companies noted that this language could be misleading. Credit protection products can supplement existing insurance policies. Accordingly, the Board proposes § 226.4(d)(1)(i)(D)(*1*) to require a revised statement that if the consumer already has enough insurance or savings to pay off or make payments on the debt if a covered event occurs, the consumer may not need the product. Proposed comment 4(d)–15 would clarify that a "covered event" refers to the event that would trigger coverage under the policy or agreement, such as loss of life, disability, or involuntary unemployment. Examples of how to provide this statement for particular products would be provided in Samples G–16(B), (C) and (D) and H–17(B), (C) and (D) in Appendices G and H.

4(d)(1)(i)(D)(*3*)

Cost. Currently, Regulation Z permits a creditor to disclose the premium or charge on a unit-cost basis for: Open-end transactions; closed-end credit transactions by mail or telephone under § 226.17(g); and certain closed-end credit transactions involving insurance or coverage that limits the total amount of indebtedness subject to coverage. Section 226.4(d)(1)(ii) and (d)(3)(ii). Concerns have been raised that unit-cost disclosures do not provide a meaningful disclosure of the potential cost of the product. The Board's review of several disclosures for credit protection products revealed that creditors often provide multiple unit-cost disclosures for each State in which the creditor offers the product. Moreover, during consumer testing conducted by the Board for this proposal, most participants could not correctly calculate the cost of the product based on a unit-cost disclosure. However, when the cost was disclosed as a dollar figure tailored to the loan amount, all participants understood the cost of the credit insurance. The Board believes that consumers would benefit from disclosure of the maximum premium or charge for the insurance or coverage to determine whether the product is affordable for them.

Accordingly, the Board proposes § 226.4(d)(1)(i)(D)(*3*) to require a statement of the maximum premium or charge per period. The Board understands that the premium or charge is typically calculated based on the rate multiplied by the outstanding balance, monthly principal and interest payment, or minimum monthly payment. Thus, for a product based on the outstanding balance of closed-end credit, the periodic premium or charge may decline as the balance declines. Alternatively, for a product based on the minimum monthly payment under an open-end credit plan, the periodic premium or charge may vary. Thus, the Board also proposes to require a disclosure that the cost depends on the consumer's balance or interest rate, as applicable.

Proposed comment 4(d)–16 would clarify that the creditor must use the maximum rate under the policy or coverage. In addition, if the premium or charge is based on the outstanding balance or periodic principal and interest payment, the creditor must base the disclosure on the maximum outstanding balance or periodic principal and interest payment possible under the loan contract or line of credit plan. Current comment 4(d)–4 regarding unit-cost disclosures would be revised to apply only to property insurance disclosures. Comment 4(d)–2 would be revised to state that, if disclosures are given early, a creditor must redisclose if the statement of the maximum premium or charge per period is different at the time of consummation or account-opening.

4(d)(1)(i)(D)(*4*)

Maximum benefit. The August 2009 Closed-End Proposal would require creditors to disclose the loan amount together with cost information for the credit protection product. *See* proposed § 226.38(h)(9). However, the Board's review of several disclosures for credit protection products revealed that the loss-of-life insurance or coverage sometimes does not cover the full loan amount. Moreover, debt cancellation or debt suspension coverage usually places limits on the dollar amount and number of payments to be paid. The Board is concerned that consumers may not realize that there are limits to the benefits, and that they will have to pay any amounts that are not covered under the insurance or coverage. During consumer testing conducted by the Board for this proposal, some participants were surprised that benefits would be capped at an amount less than the loan amount, but most understood the disclosure. Accordingly, the Board proposes § 226.4(d)(1)(i)(D)(*4*) to require a statement of the maximum benefit amount, together with a statement that the consumer will be responsible for any balance due above the maximum benefit amount, as applicable.

4(d)(1)(i)(D)(*5*) and (*6*)

Eligibility. The August 2009 Closed-End Proposal would require creditors to make a determination at the time of enrollment that the consumer meets any applicable age or employment eligibility criteria for insurance or debt cancellation or debt suspension coverage. *See* proposed § 226.4(d)(1)(iv) and (d)(3)(v). If the insurance or coverage contained other eligibility restrictions in addition to age and employment, the proposal provided the following model clauses: "Based on our review of your age and/or employment status at this time, you may be eligible to receive benefits. However, you may not qualify to receive any benefits because of other eligibility restrictions." *See* proposed Model Clauses G–16(C) in Appendix G and H–17(C) in Appendix H. Comments from consumer advocates, a Federal banking agency, a trade association, a bank, two credit protection companies, and several community banks indicated that they felt that these statements were too vague and potentially misleading. Consumer advocates suggested the Board conduct more testing to find the right balance between information overload and information sufficient for rational decision making.

To address these concerns, the Board conducted additional rounds of testing to improve this disclosure. The following language was tested: "*You may not qualify for benefits even if you buy this product.* Based on our review you currently meet the age and employment eligibility requirements, but there are other requirements that you may not meet. If you do not meet these eligibility requirements, you will not receive any benefits even if you purchase this product and pay the monthly premium." Most participants understood the disclosure, and were surprised that they might not receive benefits even after purchasing the product and making payments for a number of years. Most indicated that they would use the Federal Reserve Board Web site to learn more about eligibility requirements.

Accordingly, the Board proposes § 226.4(d)(1)(i)(D)(*5*) to require a statement that the consumer meets the age and employment eligibility requirements. If there are other eligibility requirements, the Board further proposes § 226.4(d)(1)(i)(D)(*6*) to require a statement in bold, underlined text that the consumer may not receive any benefits even if the consumer pays for the product, together with a statement that there are other requirements that the consumer may not meet and that, if the consumer does not meet these eligibility requirements, the consumer will not receive any benefits even if the consumer purchases the product and pays the periodic premium or charge. Sample language is included in Model Forms G–16(A) and H–17(A), and Sample Forms G–16(B), (C) and (D), and H–17(B), (C) and (D) in Appendices G and H.

4(d)(1)(i)(D)(*7*)

Coverage period. Currently, Regulation Z requires disclosure of the term of the insurance or coverage if it is less than the term of the credit transaction. Section 226.4(d)(1)(ii) and (d)(3)(ii). The August 2009 Closed-End Proposal would require disclosure of the term in all cases. *See* proposed § 226.38(h)(9). Consumer advocates that commented on the proposal also suggested disclosure of the date on which the consumer would no longer meet the age eligibility requirement. One bank suggested a highlighted disclosure of the age eligibility requirement. To address these concerns, the Board proposes § 226.4(d)(1)(i)(D)(*7*) to require a statement of the time period and age limit for coverage. The Board believes that disclosure of the age, rather than the date, would be more meaningful to consumers.

4(d)(1)(ii)

The August 2009 Closed-End Proposal would require creditors to make a determination at the time of enrollment that the consumer meets any applicable age or employment eligibility criteria for insurance or debt cancellation or debt suspension coverage. *See* proposed § 226.4(d)(1)(iv) and (d)(3)(v). To provide creditors with some flexibility, the Board proposes § 226.4(d)(1)(ii) to allow creditors to make the determination *prior to* or at the time of enrollment. Comment 4(d)–14 regarding age or employment eligibility criteria is revised accordingly.

4(d)(3)(i)

Debt suspension coverage. In the January 2009 Credit Card Rule, the existing rules for debt cancellation coverage were applied to debt suspension coverage. The rule requires a disclosure that the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension. *See* § 226.4(d)(3)(iii); 74 FR 5244, 5401, Jan. 29, 2009. (The January 2009 Credit Card Rule was withdrawn as of February 22, 2010, but § 226.4(d)(3)(iii) was retained in the February 2010 Credit Card Rule. 75 FR 7925 and 7658, 7796, Feb. 22, 2010.) In response to the August 2009 Closed-End Proposal, several industry commenters requested guidance on how to incorporate this requirement into the revised disclosure. Accordingly, the Board proposes § 226.4(d)(3)(i) to include this requirement in the disclosure, and proposes model forms and samples incorporating the disclosure at G–16(A) and (D) in Appendix G and H–17(A) and (D) in Appendix H.

4(d)(3)(ii)

The August 2009 Closed-End Proposal would require creditors to make a determination at the time of enrollment that the consumer meets any applicable age or employment eligibility criteria for insurance or debt cancellation or debt suspension coverage. *See* proposed

§ 226.4(d)(1)(iv) and (d)(3)(v). To provide creditors with some flexibility, the Board proposes § 226.4(d)(3)(ii) to allow creditors to make the determination *prior to* or at the time of enrollment. Comment 4(d)–14 regarding age or employment eligibility criteria is revised accordingly.

4(d)(4) Telephone Purchases

In the January 2009 Credit Card Rule, the Board exempted open-end (not home-secured) plans, from the requirement to obtain a written signature or initials from the consumer for the telephone sales of credit insurance or debt cancellation or debt suspension plans. *See* § 226.4(d)(4); 74 FR 5244, 5401, Jan. 29, 2009. However, creditors must make the disclosures required under current § 226.4(d)(1)(i) and (ii) or (d)(3)(i) through (iii) orally; maintain evidence that the consumer affirmatively elected to purchase the insurance or coverage; and mail the required disclosures within three business days after the telephone purchase. (The January 2009 Credit Card Rule was withdrawn as of February 22, 2010, but § 226.4(d)(4) was retained in the February 2010 Credit Card Rule. 75 FR 7925 and 7658, 7796, Feb. 22, 2010.) The August 2009 Closed-End Proposal would apply this same rule to HELOCs. *See* proposed § 226.4(d)(4); 74 FR 43232, 43322, Aug. 26, 2009. Under this proposal, the disclosures would be required under § 226.4(d)(1)(i) and (d)(3)(i), rather than under § 226.4(d)(1)(i) and (ii) and (d)(3)(i) through (iii). Accordingly, the Board proposes to revise § 226.4(d)(4) to require creditors making telephone disclosures to provide orally the disclosures required under § 226.4(d)(1)(i) and (d)(3)(i).

Section 226.5 General Disclosure Requirements

Section 226.5 provides general disclosure requirements for open-end credit. The Board is proposing to revise § 226.5 and the associated commentary to include references to the proposed open-end reverse mortgage disclosures in § 226.33.

Section 226.5b Requirements for Home-Equity Plans

Reverse Mortgages

Currently, reverse mortgages that are structured as open-end credit plans are subject to § 226.5b. The Board is proposing to consolidate the disclosure requirements for open-end reverse mortgages in § 226.33. Consequently, the Board proposes to revise § 226.5b to exclude reverse mortgages from the disclosure requirements in current paragraphs (a) through (e). The Board's 2009 HELOC Proposal also proposed to amend § 226.5b. *See* 74 FR 43428 Aug. 26, 2009 for further information. The Board has incorporated in the regulatory text and commentary for § 226.5b both the changes that were proposed in the Board's 2009 HELOC Proposal and the changes proposed in this notice. The Board is not soliciting comment on the amendments previously proposed.

Proposed § 226.5b(h) provides a cross-reference to the sections in § 226.33 which apply to reverse mortgages. The Board is also proposing to remove proposed comments 5b(c)(9)(ii)–6 and 5b(c)(9)(iii)–4, which provide guidance on how to disclose the payment terms for open-end reverse mortgages. *See* 74 FR 43428, 43586, Aug. 26, 2009. As discussed more fully below in the section-by-section analysis to § 226.33, the Board is proposing not to apply the minimum periodic payment disclosures to open-end reverse mortgages.

Reverse mortgages would remain subject to the other provisions in § 226.5b. Current § 226.5b(g) (proposed to be redesignated as § 226.5b(d) in the August 2009 HELOC Proposal) requires a creditor to refund fees paid for a home equity plan if any term required to be disclosed in § 226.5b(d) (proposed to be redesignated as § 226.5b(c) in the August 2009 HELOC Proposal) changes (other than a change due to fluctuations in the index in a variable-rate plan) before the plan is opened and the consumer elects not to open the plan. *See* 74 FR 43428, 43484, Aug. 26, 2009. For reverse mortgages, proposed § 226.5b(d) would be revised to apply to the early open-end reverse mortgage disclosures required by § 226.33(d)(1). Revisions to proposed § 226.5b(d) also would clarify that the creditor would not be required to refund fees if the consumer changed the type of payment he elected to receive under proposed § 226.33(c)(5), or for changes resulting from verification of the appraised property value or the consumer's age. For example, if the disclosure is based on the consumer's choice to receive only monthly payments, but after the disclosure is provided the consumer decides instead to receive funds in the form of a line of credit, the creditor would not be required to refund the consumer's fees if the consumer later decided not to proceed with the reverse mortgage.

Under current § 226.5b(h) (proposed to be redesignated as § 226.5b(e) in the August 2009 HELOC Proposal), which implements TILA Section 127A(c)(2), neither a creditor nor any other person may impose a nonrefundable fee on a consumer until after the third business day following the consumer's receipt of the disclosures required by § 226.5b. 15 U.S.C. 1637a(c)(2); 74 FR 43428, 43536, 43593, Aug. 26, 2009. This provision applies to all HELOCs subject to § 226.5b, including reverse mortgages. As discussed in the section-by-section analysis to § 226.33, for open-end reverse mortgages, the disclosures required by § 226.5b are proposed to be moved to § 226.33; the nonrefundable fee provision in § 226.5b, however, still applies to open-end reverse mortgages subject to § 226.33. Thus, under proposed § 226.5b(e), a consumer who has applied for a HELOC, including an open-end reverse mortgage, may choose not to proceed with the transaction for any reason within three business days after application and receive a refund of any fees paid. *See* proposed comment 5b(e)–1, 74 FR 43428, 43593, Aug. 26, 2009.

This proposal amends the commentary to previously proposed § 226.5b(e) to reflect a new proposed rule regarding reverse mortgages, discussed in more detail below in the section-by-section analysis to § 226.40(b)(2). Under this new rule, neither a creditor nor any other person may impose a nonrefundable fee on a consumer for a reverse mortgage until after the third business day following the consumer's completion of counseling from a qualified counselor. *See* proposed § 226.40(b)(2) and accompanying commentary. Consequently, open-end reverse mortgages would be subject to two restrictions on imposing nonrefundable fees: (1) The rule under previously proposed § 226.5b(e) described above, which applies to all HELOCs subject to § 226.5b (*see* 74 FR 43428, 43536, Aug. 26, 2009); and (2) the rule under proposed § 226.40(b)(2), which applies to all reverse mortgages subject to § 226.33.

The Board proposes to add comment 5b(e)–5 to clarify that, for open-end reverse mortgages, the restrictions on imposing nonrefundable fees in §§ 226.5b and 226.40(b)(2) both apply. The proposed comment also cross-references proposed commentary to § 226.40(b)(2), which explains the practical implications of these restrictions in reverse mortgage transactions. *See* proposed comment 40(b)(2)(i)–3.

Current § 226.5b(f) limits the changes that creditors may make to HELOCs subject to § 226.5b, including open-end reverse mortgages. Current § 226.5b(f)(1) limits changes to the annual percentage rate, and current § 226.5b(f)(3) limits changes to plan terms; both apply to reverse mortgages. Current § 226.5b(f)(2) limits the situations in which a creditor may terminate a plan and demand repayment of the entire outstanding balance in advance of the original term. It does not apply to reverse mortgages. Instead, current § 226.5b(f)(4) limits when open-end reverse mortgages may be terminated: in the case of default; if the consumer transfers title to the property securing the note; if the consumer ceases using the property as the primary dwelling; or upon the consumer's death. No substantive revisions to these provisions are proposed. The proposal would revise § 226.5b(f)(4) to reflect the change of the defined term "reverse mortgage transaction" to "reverse mortgage" discussed in the section-by-section analysis to § 226.33(a).

Interest Rate Not Under the Creditor's Control

TILA Section 137(a), implemented by § 226.5b(f)(1), prohibits variable-rate HELOCs from being subject to any interest rate changes other than those based on "an index or rate of interest which is publicly available and is not under the control of the creditor." 15 U.S.C. 1647(a). Accordingly, § 226.5b(f)(1) prohibits creditors from changing a HELOC's APR unless the change is "based on an index that is not under the creditor's control" and is "available to the general public." The Official Staff Commentary to § 226.5b(f)(1) explains that a creditor may not make changes based on its own prime rate or cost of funds, and may not reserve a contractual right to change rates at its discretion. See comment 5b(f)(1)–1. The commentary states that a creditor may use a published prime rate, such as that in the *Wall Street Journal,* even if the creditor's own prime rate is one of several rates used to establish the published rate. *Id.*

In the August 2009 HELOC Proposal, the Board did not propose to revise these provisions. However, earlier this year, the Board adopted final rules regarding open-end (not-home-secured) credit, which include additional guidance regarding what constitutes an index outside of the creditor's control in the context of credit cards under an open-end (not-home-secured) consumer credit plan (February 2010 Credit Card Rule). *See* 75 FR 7658, 7737, 7819, 7909, Feb. 22, 2010. Under the February 2010 Credit Card Rule, new § 226.55(b)(2) provides that a creditor may not increase an APR for a variable-rate credit card unless the change is based on "an index that is not under the card issuer's control and is available to the general public" and "the increase in the [APR] is due to an increase in the index." *See id.* at 7819.

The commentary to this new provision incorporates the explanations of "an index that is not under the [creditor's] control" that appear in the HELOC rules, described above. *See* comment 55(b)(2)–2.i; 75 FR 7658, 7909, Feb. 22, 2010. In addition, the commentary includes two situations not currently associated with the meaning of this phrase in the HELOC rules.

First, under § 226.55(b)(2), a card issuer exercises control over the index if the card issuer has set a minimum rate "floor" below which a variable rate cannot fall, even if a decrease would be consistent with a change in the applicable index. *See* comment 55(b)(2)-2.ii; 75 FR 7658, 7737, 7909, Feb. 22, 2010. Second, a card issuer exercises control over the index if the variable rate can be calculated based on any index value that existed during a period of time. *See* comment 55(b)(2)–2.iii; 75 FR 7658, 7737, 7909, Feb. 22, 2010. In explaining this second provision, the **SUPPLEMENTARY INFORMATION** to the February 2010 Credit Card Rule notes that card issuers typically reset rates on variable-rate credit cards monthly, every two months, or quarterly. Under the new rule, a card issuer is permitted to adjust the variable rate based on the value of the index on a particular day, or in the alternative, the average index value during a specific period. *See id.* This second provision, however, is designed prevent creditors from setting the new rate based on, for example, the highest index value during a given period of time preceding the reset date (such as the 90 days preceding the last day of a month or billing cycle).

The Board expressed concerns that setting a rate "floor" and adjusting rates based on any index value that existed during a period of time can prevent consumers from receiving the benefit of decreases in the index. Upon review, the Board concluded that these practices constitute a creditor's control over an index to change rates in a manner prohibited by TILA. *See id.* at 7909 (citing TILA Section 171(b)(2); 15 U.S.C. 1666(b)(2)).

The Board solicits comment on whether to amend the commentary to § 226.5b(f)(1) to adopt these clarifications regarding what constitutes control over an index for purposes of the restrictions on changing the rate for a variable-rate HELOC. The Board requests that commenters provide specific reasons why the Board should or should not do so.

Section 226.6 Account-Opening Disclosures

Reverse Mortgages

Section 226.6(a), as proposed to be amended in the Board's August 2009 HELOC Proposal, would be revised by this proposal to exclude reverse mortgages from the tabular disclosure requirements in § 226.6(a)(1) and (a)(2). Instead, reverse mortgages would be subject to the disclosure requirements in proposed § 226.33(c) and (d)(2). In addition, as discussed in the section-by-section analysis to § 226.33(c) below, reverse mortgages would not be subject to the requirements in § 226.6(a)(5)(i) to disclose voluntary credit insurance, debt cancellation or debt suspension, and in § 226.6(a)(5)(v) to disclose information about fixed-rate and -term payment plans. However, reverse mortgages would remain subject to the disclosure requirements in § 226.6(a)(3), (a)(4), (a)(5)(iii) and (a)(5)(iv). These provisions require disclosures about charges, rates, security interests, billing rights, and possible creditor actions, respectively, and would be provided outside the required disclosure tables. The Board has incorporated in the regulatory text and commentary for § 226.6 both the changes that were proposed in the Board's 2009 HELOC Proposal and the changes proposed in this notice. The Board is not soliciting comment on the amendments previously proposed.

Credit Protection Products

As discussed in the section-by-section analysis to proposed § 226.4(d)(1) and (d)(3) above, credit insurance, debt cancellation coverage, and debt suspension coverage (collectively, "credit protection products") are products that are offered in connection with a credit transaction and that present unique costs and risks to the consumer. Currently, Regulation Z requires the creditor to provide detailed disclosures of the costs to the consumer if the product is voluntary (as a condition of excluding the costs from the finance charge), but not if the product is required. *See* TILA Section 106(b), 15 U.S.C. 1605(b); § 226.4(d)(1) and (d)(3). If the product is required, Regulation Z requires only a brief disclosure of the cost, without further details, such as the length of coverage. *See* § 226.6(b)(5)(i) (open-end not home-secured); proposed § 226.6(a)(5)(i) (HELOCs). Based on comments to the August 2009 Closed-End Proposal and the Board's review of creditor solicitations and disclosures for credit protection products, the Board is proposing more comprehensive disclosures of the risks associated with the optional products. *See* proposed § 226.4(d)(1) and (d)(3). However, the Board is concerned that consumers that are offered HELOCs or open-end (not home-secured) credit that require payment for credit protection products will not be fully informed of the costs and risks associated with these products.

Accordingly, the Board proposes to require creditors that require credit protection products in connection with open-end credit to provide the disclosures required in § 226.4(d)(1)(i) and (d)(3)(i), as applicable, except for § 226.4(d)(1)(i)(A), (B), (D)(5), (E) and (F). This proposal would replace § 226.6(a)(5)(i), which was proposed for HELOCs in the August 2009 HELOC Proposal, and would revise § 226.6(b)(5)(i), which was adopted for open-end (not home-secured) credit in the January 2009 Credit Card Rule. (The January 2009 Credit Card Proposal was withdrawn as of February 22, 2010, but § 226.6(b)(5)(i) was retained in the February 2010 Credit Card Rule. 75 FR 7925 and 7658, 7804, Feb. 22, 2010.) Thus, for required credit protection products, creditors would have to disclose information about the Federal Reserve Board's Web site regarding credit protection products, the need for the product, the maximum cost and benefit, general eligibility restrictions, and the time period and age limit for coverage. However, the creditor would not be required to do the following because it is not applicable if the credit protection product is required in connection with the credit transaction: (1) Determine the consumer's age or employment eligibility at the time of enrollment; (2) obtain the consumer's affirmative consent; or (3) disclose the optional nature, age and employment eligibility, or statement of the consumer's affirmative consent.

The Board proposes to require these disclosures using its authority under TILA Section 105(a), 15 U.S.C. 1604(a). TILA Section 105(a) authorizes the Board to prescribe regulations to carry out the purposes of the act. TILA's purposes include promoting "the informed use of credit," which "results from an awareness of the cost thereof by consumers." TILA Section 102(a), 15 U.S.C. 1601(a). A premium or charge for a required credit protection product is a cost assessed in connection with credit. The credit transaction and the relationship between the creditor and the consumer are the reasons the product is offered or available. Because there have long been concerns about the merits of these products,[16] the Board believes that consumers would benefit from clear and meaningful disclosures regarding the associated costs and risks. As discussed more fully in the section-by-section analysis for proposed § 226.4(d)(1) and (d)(3) above, consumer testing showed that without clear disclosures, participants were unaware of the costs and risks of these products. For these reasons, the Board believes that this proposed rule would serve to inform consumers of the costs and risks of accepting a HELOC or open-end (not home-secured) credit plan with a required credit protection product.

Section 226.7 Periodic Statement

Reverse mortgages. Section 226.7 identifies information about an open-end account, including a reverse mortgage, that must be disclosed when a creditor is required to provide periodic statements. Section 226.7(a)(8), which implements TILA Section 127(b)(9), requires a creditor offering HELOCs subject to § 226.5b, including reverse mortgages, to disclose on the periodic statement the date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges. 15 U.S.C. 1637(b)(9). As discussed more fully below in the section-by-section analysis to § 226.33(c)(13), the disclosure of a grace period for reverse mortgages is not relevant or meaningful to consumers who are not making regular payments. For this reason the Board proposes to exercise its authority under TILA Sections 105(a) and 105(f) to exempt reverse mortgages from the requirement to state whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge. The Board believes that an exemption is warranted because the grace period disclosure may be confusing to reverse mortgage consumers who are not making regular payments.

Consumer testing of periodic statements for all HELOCs. Under the August 2009 HELOC Proposal, creditors would be required to provide periodic statements that group fees and interest together, separate from transactions. *See* proposed § 226.7(a)(6)(i), 74 FR 43428, 43541, Aug. 26, 2009. The Board also proposed to eliminate the requirement that creditors disclose the effective APR on HELOC periodic statements. The Board proposed sample forms for HELOC periodic statements, developed largely based on the results of the Board's prior consumer testing conducted for credit cards. *See* proposed Samples G–24(A), G–24(B), and G–24(C) in Appendix G of part 226, 74 FR 43428, 43570, Aug. 26, 2009. The Board indicated that it would conduct additional consumer testing of model disclosures before finalizing the August 2009 HELOC Proposal. 74 FR 43428, 43433, Aug. 26, 2009. In 2009 and 2010, the Board and ICF Macro tested sample periodic statements in three rounds of interviews with 31 participants. Macro prepared a detailed report of findings, which is available on the Board's public Web site: *http://www.federalreserve.gov.* The Board is also providing this summary of the testing and solicits comment.

Consistent with the results from the Board's credit card testing, participants in the three rounds of HELOC testing found it beneficial to have fees and interest separated from transactions on the periodic statement. Consumer testing also further supported the Board's August 2009 HELOC Proposal to eliminate the requirement for creditors to disclose the effective APR on HELOC periodic statements. Participants in the three rounds of HELOC testing were asked questions about the effective APR disclosure designed to elicit their understanding of the rate. A very small minority of participants correctly explained that the effective APR for fixed-rate advances was higher than the corresponding APR for fixed-rate advances because the effective APR included a fixed-rate advance fee that had been imposed. An even smaller minority also correctly explained that the effective APR for variable-rate advances was the same as the corresponding APR for variable-rate advances because no transaction fee had been imposed on those advances. A majority offered incorrect explanations or did not offer any explanation. In addition, the inclusion of the effective APR disclosure on the statement was often confusing to participants; in two rounds some participants mistook the effective APR for the corresponding APR. These results are consistent with the testing results of the effective APR for credit cards.

Section 226.9 Subsequent Disclosure Requirements

Reverse mortgages. Section 226.9 sets forth a number of disclosure requirements that apply after a home-equity plan subject to § 226.5b, including an open-end reverse

[16] *See, e.g.,* Bd. of Governors of the Fed. Reserve Sys. and U.S. Dep't of Hous. and Urban Dev., *Joint Report to the Congress Concerning Reform to the Truth in Lending Act and the Real Estate Settlement Procedures Act* at 64–66 (1998) (raising concerns about high-pressure sales tactics, costs and cancellation rights for credit protection products).

mortgage, is opened. This section contains cross-references to the account-opening disclosures in § 226.6. The proposal would revise § 226.9 and the associated commentary to reference the reverse mortgage account-opening disclosure requirements in § 226.33 as well. The Board has incorporated in the regulatory text and commentary for § 226.9 both the changes that were proposed in the Board's 2009 HELOC Proposal and the changes proposed in this notice. The Board is not soliciting comment on the amendments previously proposed.

Consumer testing of notices of action taken and reinstatement notices and responses for all HELOCs. Under the August 2009 HELOC Proposal, proposed § 226.9(j)(1) would retain the existing requirement that a creditor provide the consumer with notice of temporary account suspension or credit limit reduction under § 226.5b(f)(3)(i) or (f)(3)(vi). 74 FR 43428, 43521, Aug. 26, 2009. Under proposed § 226.9(j)(3), creditors taking action under § 26.5b(f)(2) would be required to provide the consumer with a notice of the action taken and specific reasons for the action. In addition, proposed § 226.5b(g)(2)(v) would require creditors to provide consumers with a notice of results of a reinstatement investigation. To facilitate compliance, model clauses were proposed to illustrate the requirements for these notices. *See* proposed Model Clauses G–22(A), G–22(B), G–23(A) and G–23(B) in Appendix G of part 226, 74 FR 43428, 43569, Aug. 26, 2009. The Board indicated that it would conduct additional consumer testing of model disclosures before finalizing the August 2009 HELOC Proposal. 74 FR 43428, 43433, Aug. 26, 2009.

The Board and ICF Macro conducted testing in 2009 and 2010 of the proposed model clauses for notices that would be required when a creditor suspends or reduces the credit limit for a HELOC, and when a creditor responds to a consumer's request to reinstate a suspended or reduced line. In this proposal, the Board provides a summary of the findings for comment. A detailed report of the findings is included in Macro's report, available on the Board's public Web site: *http://www.federalreserve.gov.*

In the August 2009 HELOC Proposal, the Board included model clauses G–23(A) and G–23(B) to illustrate language for a notice to be used in circumstances in which the creditor:

- Temporarily suspends, advances or reduces a credit limit due to a significant decline in the value of the property, a material change in the consumer's financial circumstances, or the consumer's default of a material obligation under the plan; or
- Takes action (including termination of the account as well as temporary suspension or credit limit reduction) due to the consumer's failure to make a required minimum periodic payment within 30 days of the due date, the consumer's action or inaction that adversely affected the creditor's interest in the property, or an occurrence of fraud or material misrepresentation concerning the account.

Notice of suspension or reduction. A notice that included model clauses in G–23(A) was tested in two rounds of interviews with a total of 21 participants. The notice that was shown to participants indicated that their credit limit had been reduced because the value of the property securing their loan had declined significantly. The notice tested in one round was in the form of a checklist that the creditor could use to indicate the reason for reducing the credit line. A few participants were confused by the listing of other options on the list, even though only one option was checked and the others did not apply to the consumer's situation. Several other participants seemed somewhat confused by the format but eventually understood the form.

As a result, the notice tested in the following round included the specific reason for credit line reduction with no other options listed on the notice. Participants in the next round expressed significantly better understanding of the revised notice. All participants understood that the purpose of the disclosure was to inform them that their credit line was reduced because the value of their home decreased. All participants also understood that they could ask for reinstatement of their original credit limit and how to do so. Some participants understood that they would not be charged a fee by the creditor for the first request to reinstate the credit line, and all but one participant understood that they might be charged for subsequent requests.

Response to request for reinstatement. The Board also tested model clauses in proposed G–22(B) regarding the consumer's rights when the consumer requests reinstatement of a HELOC that has been suspended or reduced and for the creditor's response to a reinstatement request. These clauses were tested in one round with 11 participants. The model clauses, for example, inform the consumer that the consumer's reinstatement request has been received and that the creditor has investigated the request. They contain sample language for explaining the results of a reinstatement investigation in which the creditor found that a reason for suspension of advances or reduction of the credit limit still exists, either because the condition permitting the freeze or credit limit reduction continues to exist or because another condition permitting a freeze or credit line reduction under Regulation Z exists.

Consumer testing indicated that consumers understand the proposed model clauses for a reinstatement notice. In one round of interviews, all participants were able to explain the purpose of the reinstatement notice. All participants also understood that: Their credit limit was not being reinstated to the previous level due to factors other than a reduction in the value of their home; the creditor's decision was based on information received from an examination of the consumer's credit report; and that they could ask the creditor to reinstate their credit limit again, but would have to pay a fee in connection with the request. The proposed model clauses for a reinstatement notice tested so well that the Board did not repeat the testing of this disclosure in subsequent rounds.

Section 226.15 Right of Rescission

15(a) Consumer's Right To Rescind

15(a)(1) Coverage

Section 226.15(a)(1), which implements TILA Section 125(a), generally provides that in a credit plan in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind: (1) Each credit extension made under the plan; (2) the plan when the plan is opened; (3) a security interest when added or increased to secure an existing plan; and (4) the increase when a credit limit on the plan is increased. 15 U.S.C. 1635(a). Nonetheless, as provided in TILA Section 125(e), the consumer does not have the right to rescind each credit extension made under the plan if the extension is made in accordance with a previously established credit limit for the plan. 15 U.S.C. 1635(e). The Board proposes technical edits to § 226.15(a)(1) and related commentary. No substantive change is intended.

Different terminology is used throughout § 226.15 and the related commentary to refer to the events mentioned above that give rise to a right of rescission, such as "transactions" and "occurrences." For consistency, the Board proposes to revise § 226.15 and related commentary to refer to these events as "transactions" for purposes of § 226.15.

15(a)(2) Exercise of the Right

As discussed in the section-by-section analysis to proposed § 226.23(a)(2) below, the Board proposes to revise § 226.23(a)(2) and related commentary on rescission for closed-end loans to describe (1) How the consumer must exercise the right of rescission, (2) whom the consumer must notify during the three-business-day period following consummation and after that period has expired (the extended right), and (3) when the creditor or current owner will be deemed to receive the consumer's notice. Proposed § 226.23(a)(2) provides that the party the consumer must notify depends on whether the right of rescission is exercised during the three-business-day period following consummation or after expiration of that period. Proposed § 226.23(a)(2)(ii)(A) states that, during the three-business-day period, the consumer must notify the creditor or the creditor's agent designated on the rescission notice. Proposed § 226.23(a)(2)(ii)(A) also includes the guidance from current comment 23(a)(2)–1, that if the notice does not designate the address of the creditor or its agent, the consumer may mail or deliver notification to the servicer, as defined in § 226.36(c)(3). The proposed rule is intended to ensure that the notice is sent to the person most likely still to own the debt obligation. Generally, closed-end loans are not transferred during the three-business-day period following consummation.

Proposed § 226.23(a)(2)(ii)(B) addresses to whom the notice must be sent after the three-business-day period has expired, and is intended to ensure that consumers can exercise the extended right of rescission if the creditor has transferred the consumer's debt obligation. Under proposed § 226.23(a)(2)(ii)(B), the consumer must mail or deliver notification to the current owner of the debt obligation. However, notice to the servicer would also constitute delivery to the current owner. As discussed in the section-by-section analysis to proposed § 226.23(a)(2), closed-end loans are often transferred shortly after consummation and securitized. In addition, the original creditor may no longer exist because of dissolution, bankruptcy, or merger. As a result, consumers may have difficulty identifying the current owner of their loan, and may reasonably be confused as to whom they should contact to rescind their loan. In contrast, consumers usually know the identity of their servicer. They may regularly receive statements or other correspondence from their servicer, for example, and many consumers continue to mail monthly mortgage payments to the servicer rather than have these payments automatically debited from their checking or savings account.

The Board proposes revisions to § 226.15(a)(2) applicable to HELOCs, consistent with those proposed in § 226.23(a)(2) as discussed above. While the Board realizes that HELOC accounts may not be transferred and securitized as often as closed-end loans, there are cases for HELOCs where the original creditor no longer exists because of dissolution, bankruptcy, or merger. Thus, the Board believes that the proposed rules in § 226.15(a)(2) are needed for HELOCs to ensure that consumers can exercise the extended right of rescission if the creditor has transferred the consumer's debt obligation. The Board also believes that having consistent rules on these issues for closed-end mortgage loans and HELOCs will facilitate creditors' compliance with the rules. As discussed in more detail in the section-by-section analysis to proposed § 226.23(a)(2), the Board solicits comment on this proposed approach.

15(a)(3) Rescission Period

For the reasons discussed in the section-by-section analysis to proposed § 226.23(a)(3) below, the Board proposes to revise § 226.15(a)(3) and related commentary to clarify the following: (1) The consumer's death terminates an unexpired right to rescind; (2) the consumer's filing for bankruptcy generally does not terminate the unexpired right to rescind if the consumer still retains an interest in the property after the bankruptcy estate is created; and (3) a refinancing with a creditor other than the current holder of the obligation and paying off the loan would terminate the unexpired right to rescind. The Board also proposes to clarify when the rescission period expires where a creditor provides corrected material disclosures or a rescission notice.

15(a)(4) Joint Owners

Section 226.15(a)(4) provides that when more than one consumer in a transaction has the right to rescind, the exercise of the right by one consumer is effective for all consumers. Comment 15(a)(4)–1 provides that when more than one consumer has the right to rescind a transaction, any one consumer may exercise that right and cancel the transaction on behalf of all. For example, if both a husband and wife have the right to rescind a transaction, either spouse acting alone may exercise the right and both are bound by the rescission. The Board proposes technical edits to these provisions. No substantive change is intended.

15(a)(5) Material Disclosures

Background

TILA and Regulation Z provide that a consumer may exercise the right to rescind until midnight after the third business day following the latest of (1) the transaction that gives rise to the right of rescission (such as opening the HELOC account), (2) delivery of the notice of the right to rescind, or (3) delivery of all material disclosures. TILA Section 125(a); 15 U.S.C. 1635(a); § 226.15(a)(3). Thus, the right to rescind does not expire until the notice of the right to rescind and the material disclosures are properly delivered. This ensures that consumers are notified of their right to rescind, and that they have the information they need to decide whether to exercise the right. If the rescission notice and material disclosures are not delivered, a consumer's right to rescind may extend for up to three years from the date of the transaction that gave rise to the right to rescind. TILA Section 125(f); 15 U.S.C. 1635(f); § 226.15(a)(3).

TILA defines the following as "material disclosures" for purpose of the right of rescission related to HELOCs: (1) The method of determining the finance charge and the balance upon which a finance charge will be imposed, and (2) the APR. TILA Section 103(u); 15 U.S.C. 1602(u). Consistent with TILA, current footnote 36 to § 226.15(a)(3) defines the term "material disclosures" to include the above disclosures. In addition, the Board has previously added information about membership or participation fees and certain payment information to the regulatory definition of "material disclosures" for HELOCs, pursuant to the Board's authority to make adjustments to TILA requirements as in the judgment of the Board are necessary or proper to effectuate the purposes of TILA. *See* TILA Sections 102(a), 105(a); 15 U.S.C. 1601(a), 1604(a); 46 FR 20847, Apr. 7, 1981; 54 FR 24670, June 9, 1989. Thus, current footnote 36 to § 226.15(a)(3) also includes the following information as "material disclosures:": (1) The amount or method of determining the amount of any membership or participation fee that may be imposed as part of the plan; and (2) payment information described in current §§ 226.5b(d)(5)(i) and (ii) that is required under former § 226.6(e)(2) (redesignated as § 226.6(a)(3)(ii) in the February 2010 Credit Card Rule). This payment information is: (1) The length of the draw period and any repayment period; (2) an explanation of how the minimum periodic payment will be determined and the timing of the payments; and (3) if payment of only the minimum periodic payment may not repay any of the principal or may repay less than the outstanding balance, a statement of this fact as well as that a balloon payment may result.

Congress first added the definition of "material disclosures" to TILA in 1980 so that creditors would be "in a better position to know whether a consumer may properly rescind a transaction." [17] The HELOC market has changed considerably since Congress created this definition of "material disclosures." In the August 2009 HELOC Proposal, the Board proposed comprehensive revisions to the account-opening disclosures for HELOCs that would reflect these changes in the HELOC market. The proposed account-opening disclosures and revised model forms were developed after extensive consumer testing to determine which credit terms consumers find the most useful in evaluating credit transactions. Based on consumer testing, the August 2009 HELOC Proposal made less prominent or eliminated certain account-opening disclosures that are currently defined as "material disclosures," while adding other disclosures that are more important to consumers today. As discussed below, the Board proposes to revise the definition of "material disclosures" consistent with the Board's proposed changes to the account-opening disclosures in § 226.6(a) under the August 2009 HELOC Proposal and with the proposed changes to open-end reverse mortgage disclosures discussed in the section-by-section analysis to § 226.33 below. The Board also proposes to revise the definition of "material disclosures" for closed-end mortgage loans, as discussed under § 226.23(a)(5) below.

August 2009 HELOC Proposal

In the August 2009 HELOC Proposal, the Board proposed two significant revisions to the account-opening disclosures for HELOCs under § 226.6(a) (moved from former §§ 226.6(a) through (e)). The proposed revisions (1) require a tabular summary of key terms to be provided before the first transaction on the HELOC plan (see proposed §§ 226.6(a)(1) and (a)(2)), and (2) change how and when cost disclosures must be made (see proposed § 226.6(a)(3) for content, and proposed § 226.5(b) and proposed § 226.9(c) for timing)).

Under the current rules, a creditor must disclose any "finance charge" or "other charge" in the account-opening disclosures that must be provided before the first transaction on a HELOC plan. In addition, the regulation identifies fees that are not considered to be either "finance charges" or "other charges" and therefore need not be included in the account-opening disclosures. The distinctions among finance charges, other charges, and charges that do not fall into either category are not always clear. Examples of included or excluded charges are in the regulation and commentary, but these examples cannot provide definitive guidance in all cases. This uncertainty can pose legal risks for creditors that act in good faith to comply with the law. Creditors are subject to civil liability and administrative enforcement for underdisclosing the finance charge or otherwise making erroneous disclosures, so the consequences of an error can be significant. Furthermore, over-disclosure of rates and finance charges is not permitted by Regulation Z for open-end credit. The fee disclosure rules also have been criticized as being outdated and impractical. These rules require creditors to provide fee disclosures at account opening, which may be months and possibly years before a particular disclosure is relevant to the consumer, such as when the consumer calls the creditor to request a service for which a fee is imposed. In addition, an account-related transaction may occur by telephone, when a written disclosure is not feasible.

The proposed changes to the disclosures in § 226.6(a) in the August 2009 HELOC Proposal are designed to respond to these criticisms while still giving full effect to TILA's requirement to disclose credit charges before they are imposed. Specifically, in the August 2009 HELOC Proposal, the Board proposed to require creditors to provide a tabular summary of key terms in writing to a consumer before the first transaction is made under the HELOC plan. This proposed tabular summary contains information about rates, fees, and payment information that the Board believes to be the most important information in the current marketplace for consumers to know before they use a HELOC account. "Charges imposed as part of the HELOC plan," as set forth in proposed § 226.6(a)(3), that are not required to be disclosed in the account-opening table must be disclosed orally or in writing before the consumer agrees to or becomes obligated to pay the charge.

The Board's Proposal

Consistent with the August 2009 HELOC Proposal, the Board now proposes to revise the definition of material disclosures to include information that is critical to consumers in evaluating HELOC offers, and to remove information that consumers do not find to be important. The proposal is intended to ensure that consumers have the information they need to decide whether to rescind a HELOC.

Proposed § 226.15(a)(5) would *retain* the following as material disclosures:

- Any APR, information related to introductory rates, and information related to variable rate plans that is required to be disclosed in the proposed account-opening table except for the lowest and highest value of the index in the past 15 years;
- Any annual or other periodic fees that may be imposed by the creditor for the availability of the plan (including any fee based on account activity or inactivity), how frequently the fee will be imposed, and the annualized amount of the fee;
- The length of the plan, the length of the draw period and the length of any repayment period;
- An explanation of how the minimum periodic payment will be determined and the timing of the payments. If paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance by the end of the plan, a statement of this fact, as well as a statement that a balloon payment may result or will result, as applicable; and
- A fee for required credit insurance, or debt cancellation or suspension coverage.

The following disclosures would be *added* to the list of material disclosures:

- The total of all one-time fees imposed by the creditor and any third parties to open the plan (this disclosure would replace an itemization of the one-time fees to open the plan that are currently material disclosures);
- Any fee that may be imposed by the creditor if a consumer terminates the plan prior to its scheduled maturity;
- If applicable, a statement that negative amortization may occur, and that negative amortization increases the principal balance and reduces the consumer's equity in the dwelling;
- Any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw

[17] S. Rep. No. 368, 98 Cong. 2d Sess. 29, *reprinted in* 1980 U.S.C.A.N.N. 236, 264.

requirements (this disclosure would replace the disclosure of fees imposed for these limitations or restrictions, which are currently material disclosures); and

• The credit limit applicable to the plan.

The following disclosures would be *removed* from the list of material disclosures:

• Any APRs that are not required to be in the proposed account-opening table, specifically any penalty APRs or APRs for fixed-rate and fixed-term advances during the draw period (unless they are the only advances allowed during the draw period);

• An itemization of one-time fees imposed by the creditor and any third parties to open the plan;

• Any transaction charges imposed by the creditor for use of the home-equity plan;

• Any fees imposed by the creditor for a consumer's failure to comply with any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as for failure to comply with any minimum outstanding balance and minimum draw requirements;

• Any finance charges that are not required to be disclosed in the account-opening table; and

• The method of determining the balance upon which a finance charge will be imposed (*i.e.,* a description of balance computation methods).

Proposed comment 15(a)(5)(i)–1 states that the right to rescind generally does not expire until midnight after the third business day following the latest of: (1) The transaction that gives rise to the right of rescission, (2) delivery of the rescission notice, as set forth in § 226.15(b), or (3) delivery of all material disclosures, as set forth in § 226.15(a)(5)(i). A creditor must make the material disclosures clearly and conspicuously, consistent with the requirements of proposed § 226.6(a)(2) or, for open-end reverse mortgages, § 226.33(c). The proposed comment clarifies that a creditor may satisfy the requirements to provide the material disclosures by providing an account-opening table described in proposed § 226.6(a)(1) or § 226.33(d)(1) and (d)(4) that complies with the regulation. Failure to provide the required non-material disclosures set forth in § 226.6 or § 226.33 or the information required under § 226.5b does not affect the right of rescission, although such failure may be a violation subject to the liability provisions of TILA Section 130, or administrative sanctions. 15 U.S.C. 1640.

Under the August 2009 HELOC Proposal, proposed §§ 226.6(a)(1)(ii) and (a)(2) sets forth certain terminology and format requirements with which creditors must comply in disclosing certain terms in the account-opening table. For example, under proposed § 226.6(a)(2)(vi)(A)(*1*)(*i*), if an APR that must be disclosed in the account-opening table is a variable rate, a creditor must disclose the fact that the APR may change due to the variable-rate feature. In describing that the rate may vary, a creditor in the account-opening table must use the term "variable rate" in underlined text. Similar requirements for reverse mortgages are proposed in § 226.33(c), (d)(2) and (d)(4).

Proposed comment 15(a)(5)(i)–3 specifies that failing to satisfy terminology or format requirements in proposed §§ 226.6(a)(1) or (a)(2) or § 226.33(c), (d)(2) and (d)(4) (including the tabular format requirement) or in the proposed model forms in Appendix G or Appendix K is not by itself a failure to provide material disclosures. In addition, a failure to satisfy the proposed 10-point font size requirement that would apply to disclosures in the HELOC or reverse mortgage account-opening tables, as set forth in proposed comment 5(a)(1)–3, is not by itself a failure to provide material disclosures. Nonetheless, a creditor must provide the material disclosures clearly and conspicuously, as described in § 226.5(a)(1) and comments 5(a)(1)–1 and –2 (as adopted in the February 2010 Credit Card Rule). In the example above, as long as a creditor satisfies the requirement to disclose clearly and conspicuously the fact that the APR may change due to the variable-rate feature, the creditor will be deemed to have provided this material disclosure even if the creditor does not use the term "variable rate" in underlined text to indicate that a rate may vary.

The Board believes that in most cases, creditors will satisfy the terminology and format requirements applicable to the account-opening disclosures when providing the material disclosures. As discussed above, proposed comment 15(a)(5)(i)–1 provides that a creditor may satisfy the requirement to provide the material disclosures by giving an account-opening table described in § 226.6(a)(1) or § 226.33(d)(2) and (d)(4) that complies with the regulation (including the terminology and format requirements). The Board believes that most creditors will take advantage of the safe harbor in proposed comment 15(a)(5)(i)–1 by using the account-opening disclosures to fulfill the obligation to provide material disclosures.

The Board does not believe that right of rescission should be extended when the creditor has provided the material disclosures clearly and conspicuously to the consumer, but the material disclosures do not meet all the terminology and format requirements applicable to the account-opening disclosures. A material disclosure that is clear and conspicuous but contains a formatting error, such as failure to use bold text, is unlikely to impair a consumer's ability to determine whether to exercise the right to rescind. In addition, providing an extended right of rescission in these cases may increase the cost of credit, as creditors would incur litigation risk and potential costs to unwind transactions based on a failure to meet certain technical terminology or format requirements, even though the disclosure in a particular case was still made clearly and conspicuously to the consumer.

Legal authority to add disclosures. The Board proposes to revise the definition of material disclosures pursuant to its authority under TILA Section 105. 15 U.S.C. 1604. Although Congress specified in TILA the disclosures that constitute material disclosures, Congress gave the Board broad authority to make adjustments to TILA requirements based on its knowledge and understanding of evolving credit practices and consumer disclosures. Under TILA Section 105(a), the Board may make adjustments to TILA to effectuate the purposes of TILA, to prevent circumvention or evasion, or to facilitate compliance. 15 U.S.C. 1604(a). The purposes of TILA include ensuring the "meaningful disclosure of credit terms" to help consumers avoid the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a).

The Board has considered the purposes for which it may exercise its authority under TILA Section 105(a) and, based on that review, believes that the proposed adjustments are appropriate. The Board believes that the proposed amendments to the definition of "material disclosures" are warranted by the complexity of HELOC products offered today and the number of disclosures that are critical to the consumer's evaluation of a credit offer. Consumer testing conducted for the Board for the August 2009 HELOC Proposal showed that certain terms in HELOC products are more important to consumers. Defining these disclosures as "material disclosures" would ensure the "meaningful disclosure of credit terms" so that consumers would have the information they need to make informed decisions about whether to rescind the credit transaction. The proposed definition may also prevent circumvention or evasion of the disclosure rules because creditors would have a greater incentive to ensure that the material disclosures are accurate.

Legal authority to add tolerances. The Board recognizes that increasing the number of material disclosures could increase the possibility of errors resulting in extended rescission rights. To ensure that inconsequential disclosure errors do not result in extended rescission rights, the Board proposes to add tolerances for accuracy of disclosures of the credit limit applicable to the plan and the total of all one-time fees imposed by the creditor and any third parties to open the plan.

The Board proposes to model the tolerances for disclosures of the credit limit and the total of all one-time fees imposed to open the plan on the tolerances provided by Congress in 1995 for the disclosure of the finance charge for closed-end mortgage loans, as discussed in more detail in the section-by-section analysis to proposed § 226.23(a)(5). As discussed in more detail in the section-by-section analyses below, disclosure of the credit limit would be considered accurate if the disclosed credit limit: (1) Is overstated by no more than ½ of 1 percent of the credit limit required to be disclosed under § 226.6(a)(2)(xviii) or $100, whichever is greater; or (2) is less than the credit limit required to be disclosed under § 226.6(a)(2)(xviii). The total of all one-time fees imposed to open the plan would be considered accurate if the disclosed amount is understated by no more than $100; or is greater than the amount required to be disclosed under § 226.6(a)(2)(vii) or § 226.33(c)(7)(i)(A).

The Board proposes the new tolerances for these disclosures pursuant to its authority in TILA Section 121(d) to establish tolerances for numerical disclosures that the Board determines are necessary to facilitate compliance with TILA and that are narrow enough to prevent misleading disclosures or disclosures that circumvent the purposes of TILA. 15 U.S.C. 1631(d). The Board does not believe that an extended right of rescission is appropriate if a creditor understates or slightly overstates the credit limit applicable to the plan, or overstates or slightly understates the total one-time fees imposed to open the plan. Creditors would incur litigation and other costs to unwind transactions based on the extended right of rescission, even though the error in the disclosure was not critical to a consumer's decision to enter into the credit transaction, and, in turn, to rescind the transaction. These disclosure errors are unlikely to influence the consumer's decision of whether to rescind the loan. The Board believes that the proposed tolerances are broad enough to alleviate creditors' compliance concerns regarding minor disclosure errors, and narrow enough to prevent misleading disclosures.

Legal authority to remove disclosures. As discussed above, the proposal removes certain disclosures from the definition of "material disclosures." Some of these removed disclosures would be replaced with similar, but more useful, disclosures, such as removing an itemization of one-time fees imposed to open a HELOC plan from the definition of "material disclosures," but including the total of one-time fees imposed to open a plan as a material disclosure. The Board proposes to remove these disclosures from the definition of "material disclosures" through its exception and exemption authority under TILA Section 105. 15 U.S.C. 1604. Although Congress specified in TILA the disclosures that constitute material disclosures that extend rescission, the Board has broad authority to make exceptions to or exemptions from TILA requirements based on its knowledge and understanding of evolving credit practices and consumer disclosures. Under TILA Section 105(a), the Board may make adjustments to TILA to effectuate the purposes of TILA, to prevent circumvention or evasion, or to facilitate compliance. 15 U.S.C. 1604(a). The purposes of TILA include ensuring "meaningful disclosure of credit terms" to help consumers avoid the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a).

TILA Section 105(f) authorizes the Board to exempt any class of transactions from coverage under any part of TILA if the Board determines that coverage under that part does not provide a meaningful benefit to consumers in the form of useful information or protection. 15 U.S.C. 1604(f)(1). TILA Section 105(f) directs the Board to make the determination of whether coverage of such transactions provides a meaningful benefit to consumers in light of specific factors. 15 U.S.C. 1604(f)(2). These factors are (1) The amount of the loan and whether the disclosures, right of rescission, and other provisions provide a benefit to consumers who are parties to the transactions involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection.

The Board has considered each of these factors and, based on that review, believes that the proposed exceptions and exemptions are appropriate. Consumer testing of borrowers with varying levels of financial sophistication shows that the disclosures the Board proposes to remove from the definition of "material disclosures" (as listed above) are not likely to impact a consumer's decision to obtain a HELOC or to exercise the right to rescind. Retaining these disclosures as material disclosures increases the cost of credit when failure to provide these disclosures or technical violations due to calculation errors results in an extended right to rescind. Defining such disclosures as "material disclosures" would not provide a meaningful benefit to consumers in the form of useful information or protection. Revising the definition of "material disclosures" to reflect the disclosures that are most critical to the consumer's evaluation of credit terms would better ensure that the compliance costs are aligned with disclosure requirements that provide meaningful benefits for consumers.

An analysis of the disclosures retained, added, and removed from the definition of "material disclosures" is set forth below.

15(a)(5)(i)(A) Annual Percentage Rates

Consistent with TILA Section 103(u), current footnote 36 of § 226.15(a)(3) defines "material disclosures" to include APRs. Current comment 15(a)(3)–3 further provides that for variable rate programs, the material disclosures also include variable rate disclosures that must be given as part of the account-opening disclosures, namely the circumstances under which the rate may increase, the limitations on the increase, and the effect of the increase. The Board proposes to include any APRs that must be disclosed in the proposed account-opening table as material disclosures. *See* proposed § 226.15(a)(5)(i)(A), proposed § 226.6(a)(2)(vi), and proposed § 226.33(c)(6)(i). This includes all APRs that may be imposed on the HELOC plan related to the payment plan disclosed in the table, except for any penalty APR or any APR for fixed-rate and fixed-term advances during the draw period (unless those are the only advances allowed during the draw period). *See* proposed comment 15(a)(5)(i)–4; *see also* proposed §§ 226.6(a)(2) and (a)(2)(vi). The Board believes that APRs are critical to consumers in deciding whether to open a particular HELOC plan, and in deciding whether to rescind the plan. Consumer testing conducted for the Board on HELOC disclosures for the August 2009 HELOC Proposal shows that that current APRs on the HELOC plan are among the most important pieces of information that consumers want to know in deciding whether to open a HELOC plan.

The Board notes that the tolerance amount set forth in § 226.14(a) applies to the disclosure of APRs as material disclosures under proposed § 226.15(a)(5). *See* comment 14(a)–1. Under § 226.14(a), an APR is considered accurate if it is not more than 1/8 of 1 percentage point above or below the APR determined in accordance with § 226.14.

Introductory rate information. The Board proposes to continue to define information related to introductory rates as material disclosures. Thus, the term "material disclosures" would include the following introductory information: (1) The introductory rate; (2) the time period during which the introductory rate will remain in effect; and (3) the rate that will apply after the introductory rate expires. *See* proposed § 226.15(a)(5)(i)(A) and proposed § 226.6(a)(2)(vi)(B); *see also* proposed comment 15(a)(5)(i)–5. Based on consumer testing conducted for the Board on HELOC plans for the August 2009 HELOC Proposal, the Board believes that this information related to introductory rates is critical to consumers in understanding the current APRs that apply to the HELOC plan.

Variable-rate information. In addition, the Board proposes to continue to define information related to variable-rate plans as material disclosures. Specifically, the term "material disclosures" would include the following information related to variable-rate plans: (1) The fact that the APR may change due to the variable-rate feature; (2) an explanation of how the APR will be determined; (3) the frequency of changes in the APR; (4) any rules relating to changes in the index value and the APR, and resulting changes in the payment amount, including, for example, an explanation of payment limitations and rate carryover; and (5) a statement of any limitations on changes in the APR, including the minimum and maximum APR that may be imposed under the payment plan disclosed in the table, or if no annual or other periodic limitations apply to changes in the APR, a statement that no annual limitation exists. *See* proposed § 226.15(a)(5)(i)(A) and proposed § 226.6(a)(2)(vi)(A); *see also* proposed comment 15(a)(5)(i)–6.

Based on consumer testing conducted for the Board on HELOC plans for the August 2009 HELOC Proposal, the Board believes that the above information about variable rates is critical to consumers in understanding the variable nature of the APRs on HELOC plans. For example, consumers in the testing consistently said that they found an explanation of how the APR will be determined, which means the type of index used in making the rate adjustments and the value of the margin (such as prime rate plus 1 percent), to be valuable information in understanding how their APRs would be determined over time. In addition, the Board believes that consumers should be informed of all rate caps and floors, as consumer testing has shown that this rate information is among the most important information to a consumer in deciding whether to open a HELOC plan. Current comment 15(a)(3)–3 dealing with variable rate plans would be moved to proposed comment 15(a)(5)(i)–6 and would be revised to list the information related to variable rate plans that would be considered material disclosures, as discussed above.

The Board proposes not to include the disclosure of the lowest and highest value of the index in the past 15 years as a material disclosure even though this information is required to be included in the proposed account-opening table as part of the variable-rate information. *See* proposed § 226.15(a)(5)(i)(A), proposed § 226.6(a)(2)(vi)(A)(*1*)(*vi*), and proposed § 226.33(c)(6)(i)(A)(*1*)(*vi*). This disclosure may be useful to some consumers in understanding how the index moved in the past, so that they would have some sense of how it might change in the future; the Board does not propose to include this disclosure as a material disclosure, however, because it provides general information and does not describe a specific term applicable to the HELOC plan.

Exemption for APRs that are not required to be disclosed in the account-opening table. As discussed above, the Board proposes to exclude APRs that are not required to be disclosed in the proposed account-opening table from the definition of "material disclosures." These APRs are penalty APRs and APRs for fixed-rate and fixed-term advances during the draw period (unless they are the only advances allowed during the draw period). *See* proposed §§ 226.6(a)(2) and (a)(2)(vi).

The Board does not believe that removing penalty APRs and APRs for fixed-rate and fixed-term advances during the draw period (unless they are the only advances allowed during the draw period) from the definition of "material disclosures" would undermine the goals of consumer protection provided by the right of rescission. With respect to penalty APRs, under the August 2009 HELOC Proposal, the Board proposed to restrict creditors offering HELOCs subject to § 226.5b from imposing a penalty rate on the account for a consumer's failure to pay the account when due, unless the consumer is more than 30 days late in paying the account. *See* proposed comment 5b(f)(2)(ii)–1. In addition, under the August 2009 HELOC Proposal, creditors offering HELOCs subject to § 226.5b would be required to provide consumers with a written notice of the increase in the APR to the penalty rate at least 45 days before the effective date of the increase. *See* proposed § 226.9(i). Due to the very limited circumstances in which a penalty rate may be imposed under the August 2009 HELOC Proposal, as well as the more stringent advance notice requirements proposed, the Board believes that information about the penalty rate would not be useful to consumers in deciding whether to open a HELOC plan, and, in turn, deciding whether to exercise the right of rescission. For these reasons, the Board proposes to remove penalty APRs from the definition of "material disclosures."

Regarding APRs for fixed-rate and fixed-term advances during the draw period, some HELOC plans offer a fixed-rate and fixed-term payment feature, where a consumer is permitted to repay all or part of the balance at a fixed rate (rather than a variable rate) over a specified time period. In the August 2009 HELOC Proposal, the Board proposed that if a HELOC plan is generally subject to a variable interest rate but includes a fixed-rate and fixed-term option during the draw period, a creditor generally must not disclose in the proposed account-opening table the terms applicable to the fixed-rate and fixed-term feature, including the APRs applicable to the fixed-rate and fixed-term advances. *See* proposed § 226.6(a)(2). However, if a HELOC plan offers only a fixed-rate and fixed-term feature during the draw period, a creditor must disclose in the table information related to the fixed-rate and fixed-term feature when making the disclosures in the proposed account-opening table. The Board believes that including information about the variable-rate feature and the fixed-rate and fixed-term feature in the proposed account-opening table would create "information overload" for consumers. The Board chose to highlight the terms of the variable-rate feature in the table because this feature is automatically accessed when a consumer obtains advances from the HELOC plan. The Board understands that consumers generally must take active steps to access the fixed-rate and fixed-term payment feature.

When the fixed-rate and fixed-term features are optional features, the Board believes that information about the APRs applicable to fixed-rate and fixed-terms advances during the draw period is not critical to most consumers' decisions on whether to open a HELOC plan, and, in turn, their decisions on whether to exercise the right of rescission. Many consumers may never exercise the optional fixed-rate and fixed-term feature. For these reasons, the Board proposes to remove APRs applicable to optional fixed-rate and fixed-terms advances during the draw period from the definition of "material disclosures."

15(a)(5)(i)(B) Total of All One-Time Fees Imposed by the Creditor and Any Third Parties To Open the Plan

Consistent with TILA Section 103(u), footnote 36 to § 226.15(a)(3) defines "material disclosures" to include the method of determining the finance charge. Under § 226.4, some one-time fees imposed by the creditor or any third parties to open the HELOC plan are considered finance charges, such as loan origination fees, and those fees currently are considered material disclosures. Other one-time fees to open the HELOC plan are not considered "finance charges" under § 226.4, such as appraisal fees, and those fees currently are not considered material disclosures. *See* § 226.4(c). In addition, the total of one-time fees imposed by the creditor or any third parties to open the plan is not currently required to be disclosed in the account-opening disclosures set forth in current § 226.6, and that disclosure currently is not considered a material disclosure.

Under the August 2009 HELOC Proposal, a creditor would be required to disclose in the proposed account-opening table both (1) the total of all one-time fees imposed by the creditor and any third parties to open the HELOC plan, stated as a dollar amount; and (2) an itemization of all one-time fees imposed by the creditor and any third parties to open the plan, stated as dollar amounts, and when such fees are payable. *See* proposed §§ 226.6(a)(2)(vii) and 226.33(c)(7)(i)(A). Under this proposal, the Board proposes to revise the definition of "material disclosures" to add the total of one-time fees imposed by the creditor and any third parties to open the HELOC plan. *See* proposed § 226.15(a)(5)(i)(B). The Board believes that the total of one-time fees imposed by the creditor and any third parties to open the HELOC plan is critical information for consumers to understand the cost of the credit transaction and to decide whether to enter into the credit transaction or exercise the right of rescission. In consumer testing on HELOCs conducted for the Board for the August 2009 HELOC Proposal, participants consistently said that the total of one-time fees imposed to open the HELOC plan was one of the most important pieces of information they would consider in deciding whether to open the HELOC plan.

Tolerances. To reduce the likelihood that rescission claims would arise because of minor discrepancies in the disclosure of the total of one-time fees to open the HELOC plan, the Board proposes a tolerance in § 226.15(a)(5)(ii). As discussed above, this tolerance would be modeled after the tolerance for the finance charge for closed-end mortgage loans created by Congress in 1995. Specifically, proposed § 226.15(a)(5)(ii) provides that the total of all one-time fees imposed by the creditor and any third parties to open the plan and other disclosures affected by the total would be considered accurate for purposes of rescission if the disclosed total of all one-time fees imposed by the creditor and any third parties to open the plan is understated by no more than $100 or is greater than the amount required to be disclosed under proposed § 226.6(a)(2)(vii) or § 226.33(c)(7)(i)(A). As discussed in more detail in the section-by-section analysis to proposed § 226.23, these tolerances are consistent with the proposed tolerances applicable to the total settlement charges disclosed for closed-end mortgage loans under § 226.23(a)(5).

Proposed comment 15(a)(5)(ii)–1 addresses a situation where the total one-time fees imposed to open the account may affect the disclosure of fees imposed by the creditor if a consumer terminates the plan prior to its scheduled maturity. Specifically, waived total costs of one-time fees imposed to open the account would be considered a fee imposed by the creditor for early termination of the account by the consumer, if the creditor will impose those costs on the consumer if the consumer terminates the plan within a certain amount of time after account opening. Proposed comment 15(a)(5)(ii)–1 makes clear that the tolerances set forth in proposed § 226.15(a)(5)(ii) also apply to these waived total costs of one-time fees if they are disclosed as fees imposed by the creditor for early termination of the plan by the consumer.

The Board believes that the proposed tolerances are broad enough to alleviate creditors' compliance concerns regarding minor disclosure errors, and narrow enough to prevent misleading disclosures. The total cost of one-time fees imposed to open the HELOC account may be more prone to calculation errors than other material disclosures defined in proposed § 226.15(a)(5) because it is a tally of costs (as opposed to being a single fee), and is a term that is generally customized to the consumer (as opposed to being a standard fee amount that is the same for all consumers offered a particular HELOC plan by the creditor). The Board notes that the tolerance amounts for the total one-time fees imposed to open the account only applies to disclosures for purposes of rescission under § 226.15. These tolerances do not apply to disclosure of these total costs under § 226.6(a)(2)(vii) or § 226.33(c)(7)(i)(A); this ensures that creditors continue to take steps to provide accurate disclosure of the total one-time fees to open the account under § 226.6(a)(2)(vii) or § 226.33(c)(7)(i)(A) to avoid civil liability or administrative sanctions.

The Board proposes to model the tolerance for the disclosure of the total of one-time fees imposed to open the account on the narrow tolerances provided for closed-end mortgage loans by Congress in 1995. However, due to compliance concerns, the Board has not proposed a special tolerance for foreclosures as is provided for the finance charge for closed-end loans. The Board solicits comment on this approach. Moreover, the Board believes that the total of one-time fees imposed to open an account is often smaller than the finance charge for closed-end mortgages, and for this reason has proposed a tolerance based on a dollar figure, rather than a percentage of the credit limit applicable to the plan. The Board requests comment on whether it should increase or decrease the dollar figure. The Board also requests comment on whether the tolerance should be linked to an inflation index, such as the Consumer Price Index.

Exemption for itemization of one-time fees to open the account. While the Board proposes to include the total cost of one-time fees imposed to open the HELOC plan in the definition of "material disclosures," the Board proposes not to include the itemization of one-time fees imposed by the creditor and any third parties to open the HELOC plan as material disclosures. For each itemized one-time account opening fee that is a "finance charge," the Board would be removing this fee from the definition of "material disclosures." (Each itemized one-time account opening fee that is not a "finance charge" is currently not considered a material disclosure.) The Board does not believe that removing the itemization of one-time fees imposed to open the account from the definition of "material disclosures" would undermine the goals of consumer protection provided by the right of rescission. In consumer testing on HELOCs conducted for the Board for the August 2009 HELOC Proposal, participants indicated that they found the itemization of the one-time fees imposed to open the account helpful to them for understanding what fees they would be paying to open the HELOC plan. Nonetheless, as noted above, they indicated that the total of one-time fees imposed to open the account, and not the itemization of the fees, is one of the most important pieces of information on which they would base a decision of whether to enter into the credit transaction. Therefore, the Board believes that the total of one-time fees imposed to open the account, and not the itemization of the fees, is material to the consumer's decision about whether to enter the credit transaction or, in turn, rescind it. In addition, the Board believes that defining "material disclosures" to include the itemization of fees imposed to open the plan is unnecessary because, in most cases, if the itemization of the one-time fees imposed to open the account is incorrect, the total of those one-time fees will be incorrect as well. Nonetheless, there may be some cases where the total of one-time fees to open the account is correct but the creditor either fails to disclose one of the itemized fees or discloses it incorrectly. The Board believes that even though consumers would not have an extended right to rescind in those cases, consumers would not be harmed because the total of the one-time fees imposed to the open the account would be correct, and it is this disclosure which consumers are likely to use to base their decision of whether to enter into the credit transaction or rescind the transaction. For these reasons, the Board proposes to remove the itemization of one-time fees imposed to open the HELOC account from the definition of "material disclosures."

15(a)(5)(i)(C) Fees Imposed by the Creditor for the Availability of the HELOC Plan

Under the August 2009 HELOC Proposal, a HELOC creditor would be required to disclose in the proposed account-opening table any annual or other periodic fees that may be imposed by the creditor for the availability of the plan (including any fee based on account activity or inactivity), how frequently the fee will be imposed, and the annualized amount of the fee. *See* proposed §§ 226.6(a)(2)(viii) and 226.33(c)(7)(ii). These fees currently are considered material disclosures under footnote 36 to § 226.15(a)(3) because these fees would either be "finance charges" as defined in § 226.4, or membership or participation fees. The Board proposes to retain these disclosures as material disclosures. *See* proposed § 226.15(a)(5)(i)(C). The Board believes that fees for the availability of the HELOC plan are important to consumers in deciding whether to open the HELOC account and thus, in deciding whether to rescind the transaction. As discussed in the SUPPLEMENTARY INFORMATION to the August 2009 HELOC Proposal, Board research indicates that many HELOC consumers do not plan to take advances at account opening, but instead plan to use the HELOC account in case of emergency. The on-going costs of maintaining the HELOC plan may be of particular importance to these consumers in deciding whether to open a HELOC plan for these purposes and, in turn, whether to rescind it.

15(a)(5)(i)(D) Fees Imposed by the Creditor for Early Termination of the Plan by the Consumer

Under the August 2009 HELOC Proposal, a creditor would be required to disclose in the proposed account-opening table any fees that may be imposed by the creditor if a consumer terminates the plan prior to its scheduled maturity. *See* proposed §§ 226.6(a)(2)(ix) and 226.33(c)(7)(iii). These fees currently are not considered "material disclosures" under footnote 36 to § 226.15(a)(3) because these fees traditionally have not be considered "finance charges" and are not membership or participation fees. *See* comment 6(a)(2)–1.vi (as designated in the February 2010 Credit Card Rule). The Board proposes to include these fees in the definition of "material disclosures." The Board believes it is important for consumers to be informed of these early termination fees as consumers decide whether to open a HELOC plan, and, in turn, whether to rescind the transaction. This information may be especially important for consumers who want the option of re-negotiating or cancelling the plan at any time. HELOC consumers may particularly value these options, as most HELOCs are subject to a variable rate. The Board believes that adding fees imposed by the creditor for early termination of the plan by the consumer to the definition of "material disclosures" would not unduly increase creditor burden, as these fees typically do not require mathematical calculations that expose the creditor to the risk of errors. As discussed above, where waived total one-time fees imposed to open a HELOC are disclosed as fees imposed by the creditor for early termination of the plan by the consumer, proposed comment 15(a)(5)(ii)–1 makes clear that the tolerances set forth in proposed § 226.15(a)(5)(ii) would apply.

15(a)(5)(i)(E)–(F) Payment Terms

Under the August 2009 HELOC Proposal, a creditor would be required to disclose in the proposed account-opening table certain information related to the payment terms of the plan that will apply at account opening, including the following: (1) The length of the plan, the length of the draw period, and the length of any repayment period; (2) an explanation of how the minimum periodic payment will be determined and the timing of the payments; (3) if paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance by the end of the plan, a statement of this fact, as well as a statement that a balloon payment may result or will result, as applicable; and (4) sample payments showing the first minimum periodic payment for the draw period and any repayment period, and the balance outstanding at the beginning of the repayment period for both the current APR and the maximum APR, based on the assumption that the consumer borrows the entire credit line at account opening and does not make any further draws. *See* proposed § 226.6(a)(2)(v).

Currently, the following payment terms are defined as "material disclosures:" (1) The length of the draw period and any repayment period; (2) an explanation of how the minimum periodic payment will be determined and the timing of the payments; and (3) if payment of only the minimum periodic payment may not repay any of the principal or may repay less than the outstanding balance, a statement of this fact as well as that a balloon payment may result. The Board proposes to retain these disclosures as "material disclosures." *See* proposed § 226.15(a)(5)(i)(E) and (F). In addition, the Board proposes to include the length of the plan as a "material disclosure."

Based on consumer testing, the Board believes that the payment information described above is critical to consumers in understanding how payments will be structured under the HELOC plan. The length of the plan, the length of the draw period, and the length of any repayment period communicate important information to consumers about how long consumers may need to make at least minimum payments on the plan. In addition, an explanation of how the minimum periodic payment will be determined and the timing of the payment, as well as information about any balloon payment, provide important information to consumers about whether the minimum payments will only cover interest during the draw period (and any repayment period) or whether the minimum payments will pay down some or all of the principal by the end of the HELOC plan. Consumer testing has shown that whether a plan has a balloon payment is important information that consumers want to know when deciding whether to open a HELOC plan.

Sample payments. As discussed above, the proposed account-opening table also contains sample payments based on the payment terms disclosed in the table. The Board proposes not to include these sample payments as material disclosures. These sample payments would be based on a number of assumptions, and in most cases would not be the actual payments for consumers. Specifically, sample payments would show the first minimum periodic payment for the draw period and the first minimum periodic payment for any repayment period, and the balance outstanding at the beginning of any repayment period, based on the following assumptions: (1) The consumer borrows the maximum credit line available (as disclosed in the account-opening table) at account opening, and does not obtain any additional extensions of credit; (2) the consumer makes only minimum periodic payments during the draw period and any repayment period; and (3) the APRs used to calculate the sample payments remain the same during the draw period and any repayment period. The sample payments would be based on the maximum APR possible for the plan, as well as the current APR offered to the consumer on the HELOC plan. With respect to the current APR, if an introductory APR applies, a creditor would be required to calculate the sample payments based on the rate that would otherwise apply to the plan after the introductory APR expires. While the Board believes these sample payments are useful to consumers in understanding the payment terms offered on the HELOC plan, the Board proposes not to include them as material disclosures because in most cases they would not be the actual payments for consumers. This is particularly true for HELOCs, as opposed to the proposed payment summary for closed-end mortgage loans (discussed in the section-by-section analysis to § 226.23), because most HELOC consumers do not take out the full credit line at account opening and most HELOCs have a variable interest rate, so the rate is unlikely to remain the same throughout the life of the HELOC plan. The purpose of the sample payments disclosure is to give the consumer an understanding of the payment terms applicable to the HELOC plan, not to ensure that the consumer knows what his or her payments will be.

15(a)(5)(i)(G) Negative Amortization

Under the August 2009 HELOC Proposal, a creditor would be required to disclose in the proposed account-opening table the statement that negative amortization may occur and that negative amortization increases the principal balance and reduces the consumer's equity in the dwelling, as applicable. *See* proposed § 226.6(a)(2)(xvi). This statement about negative amortization currently is not considered a material disclosure. The Board proposes to include this statement about negative amortization in the definition of "material disclosures." *See* proposed § 226.15(a)(5)(i)(G). The Board believes that whether negative amortization may occur on a HELOC account is likely to impact a consumer's decision on whether to open a particular HELOC account, and, in turn, a consumer's decision about whether to rescind the transaction. Many consumers may want to avoid HELOCs that will erode the equity in their homes. An explanation of how the minimum periodic payment will be calculated is a material disclosure, but it will not always be clear from this explanation that negative amortization might occur on the HELOC plan. For example, if the minimum periodic payment is calculated as 1 percent of the outstanding balance—but the APR is above 12 percent—negative amortization would occur. Nonetheless, simply disclosing that the minimum periodic payment is calculated as 1 percent of the outstanding balance would not alert most consumers to the possibility of negative amortization. Consumer testing conducted on closed-end mortgages in relation to the August 2009 Closed-End Proposal showed that participants were generally unfamiliar with the term or concept of negative amortization. Thus, the Board proposes to include the statement about negative amortization as a material disclosure to ensure that consumers are informed about the possibility of negative amortization when deciding whether to open or rescind the HELOC account. The Board believes that adding this statement about negative amortization to the definition of material disclosures would not unduly increase creditor burden, as this statement does not require mathematical calculations that expose the creditor to the risk of errors.

15(a)(5)(i)(H) Transaction Requirements

Under the August 2009 HELOC Proposal, a creditor would be required to disclose in the proposed account-opening table any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw requirements. *See* proposed §§ 226.6(a)(2)(xvii) and 226.33(c)(7)(v). This information about transaction requirements currently is not considered a material disclosure. The Board proposes to include this information in the definition of "material disclosures." *See* proposed § 226.15(a)(5)(i)(H). The Board believes that these transaction restrictions are likely to impact a consumer's decision to enter into a particular HELOC account, and the consumer's decision whether to rescind the transaction. For example, as discussed in the **SUPPLEMENTARY INFORMATION** to the August 2009 HELOC Proposal, Board research indicates that many HELOC consumers do not plan to take advances at account opening, but instead plan to use that HELOC account in emergency cases. Any minimum balance requirement, and any required initial advance, would be particularly important to consumers that intend to use the account in emergency cases only. Also, restrictions on the number of advances or the amount of the advances per month or per year may be important to consumers, depending on how they plan to use the HELOC plan. The Board believes that adding disclosures about any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw requirement, to the definition of material disclosures would not unduly increase creditor burden, as these disclosures do not require mathematical calculations that expose the creditor to the risk of errors.

15(a)(5)(i)(I) Credit Limit

Under the August 2009 HELOC Proposal, creditors would be required to disclose in the proposed account-opening table the credit limit applicable to the plan. *See* proposed § 226.6(a)(2)(xviii). Currently, the credit limit is not considered a "material disclosure." The Board proposes to include the credit limit in the definition of "material disclosures." *See* proposed § 226.15(a)(5)(i)(I). Based on consumer testing on HELOCs conducted for the Board for the August 2009 HELOC Proposal, the Board believes that the credit limit is likely to impact a consumer's decision to open a particular HELOC account, and a consumer's decision to rescind the transaction. As discussed in the **SUPPLEMENTARY INFORMATION** to the August 2009 HELOC Proposal, participants in consumer testing indicated that the credit limit was one of the most important pieces of information that they wanted to have in deciding whether to open a HELOC plan.

Tolerances. As discussed above, this proposal provides a tolerance for disclosure of the credit limit applicable to the HELOC plan, modeled after the tolerances for the finance charge for closed-end mortgage loans created by Congress in 1995. Specifically, proposed § 226.15(a)(5)(iii) provides that the credit limit applicable to the plan shall be considered accurate for purposes of § 226.15 if the disclosed credit limit (1) is overstated by no more than ½ of 1 percent of the credit limit applicable to the plan required to be disclosed under § 226.6(a)(2)(xviii) or $100, whichever is greater; or (2) is less than the credit limit required to be disclosed under § 226.6(a)(2)(xviii). For example, for a HELOC plan with a credit limit of $100,000, a creditor may overstate the credit limit by $500 and the disclosure would still be considered accurate for purposes of triggering an extended rescission right. In addition, a creditor may understate the credit limit by any amount and still be considered accurate for purposes of rescission. As discussed in more detail in the section-by-section analysis to proposed § 226.23, these tolerances are consistent with the proposed tolerances under § 226.23(a)(5) applicable to the loan amount for closed-end mortgage loans.

The Board believes that the proposed tolerances are broad enough to alleviate creditors' compliance concerns regarding minor disclosure errors, and narrow enough to prevent misleading disclosures. The credit limit may be more prone to errors than other material disclosures defined in proposed § 226.15(a)(5) because it is a term that is customized to the consumer (as opposed to being a standard term that is the same for all consumers offered a particular HELOC plan by the creditor). The Board notes that the tolerance amounts for the credit limit applicable to the plan apply only to disclosures for purposes of rescission under § 226.15. These tolerances do not apply to disclosure of the credit limit applicable to the plan under § 226.6(a)(2)(xviii); this ensures that creditors continue to take steps to provide accurate disclosure of the credit limit applicable to the plan under § 226.6(a)(2)(xviii) to avoid civil liability or administrative sanctions.

As stated above, the Board proposes to model the tolerance for disclosure of the credit limit on the tolerances provided by Congress in 1995 for disclosure of the finance charge for closed-end mortgage loans. However, the Board believes that the credit limit for HELOCs is often smaller than the finance charge for closed-end mortgages. The Board requests comment on whether it should decrease the amount of the tolerance in light of the difference between the amount of the finance charge for closed-end mortgages and the credit limit for HELOCs. On the other hand, the Board recognizes that Congress set the $100 figure in 1995 and a higher dollar figure may be more appropriate at this time. Alternatively, it may be more appropriate to link the dollar figure to an inflation index, such as the Consumer Price Index. Thus, the Board also requests comments on whether the tolerance should be set at a higher dollar figure, or linked to an inflation index, such as the Consumer Price Index. In addition, due to compliance concerns, the Board has not proposed a special tolerance for disclosure of the credit limit in connection with foreclosures as is provided for the finance charge for closed-end mortgage loans. The Board solicits comment on this approach. Finally, the Board requests comment on whether the Board should limit the amount by which the credit limit could be understated and still be considered accurate, and if so, what that limit should be. For example, could an underdisclosure of the credit limit by a large amount harm consumers (particularly homeowners that are not also borrowers on the HELOC) because the amount of the security interest that would be taken in the property would be larger than the disclosed credit limit?

15(a)(5)(i)(J) Fees for Required Credit Insurance, Debt Cancellation, or Debt Suspension Coverage

Under the August 2009 HELOC Proposal, a creditor would be required to disclose in the proposed account-opening table a premium for credit insurance described in § 226.4(b)(7) or debt cancellation or suspension coverage described in § 226.4(b)(10), if the credit insurance or debt cancellation or suspension coverage is required as part of the plan. *See* proposed § 226.6(a)(2)(xx). Fees for required credit insurance, or debt cancellation or suspension coverage currently are defined as "material disclosures" because these fees would be considered "finance charges" under § 226.4. *See* §§ 226.4(b)(7) and (b)(10). The Board proposes to retain these fees as material disclosures. *See* proposed § 226.15(a)(5)(i)(J). If credit insurance or debt cancellation or suspension coverage is required to obtain a HELOC, the Board believes that consumers should be aware of these charges or fees when deciding whether to open a HELOC plan, and, in turn, whether to rescind the plan, because consumers will be required to pay the charge or fee for this coverage every month to have the plan.

Disclosures That Would Be Removed From the Definition of "Material Disclosures"

As discussed above, the proposal removes the following disclosures from the definition of "material disclosures:" (1) Any APRs that are not required to be in the account-opening table, specifically any penalty APR or APR for fixed-rate and fixed-term advances during the draw period (unless they are the only advances allowed during the draw period); (2) an itemization of one-time fees imposed by the creditor and any third parties to open the plan; (3) any transaction charges imposed by the creditor for use of the home-equity plan; (4) any fees imposed by the creditor for a consumer's failure to comply with any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as for failure to comply with any minimum outstanding balance and minimum draw requirements; (5) any finance charges that are not required to be disclosed in the account-opening table; and (6) the method of determining the balance upon which a finance charge will be imposed (*i.e.,* a description of balance computation methods). The proposed exemptions from the definition of "material disclosures" for APRs that are not required to be in the account-opening table and for an itemization of one-time fees imposed by the creditor and any third parties to open the account are discussed in more detail above in the section-by-section analyses to proposed §§ 226.15(a)(3)(A) and (B) respectively. The other exemptions are discussed below.

Transaction charges. Under the August 2009 HELOC Proposal, a creditor would be required to disclose in the proposed account-opening table any transaction charges imposed by the creditor for use of the home-equity plan (except for transaction charges imposed on fixed-rate and fixed-term advances during the draw period, unless those are the only advances allowed during the draw period). *See* proposed §§ 226.6(a)(2) and (a)(2)(xii), and § 226.33(c)(13)(i). For example, a creditor may impose a charge for certain types of transactions under a variable-rate feature, such as cash advances or foreign transactions made with a credit card that accesses the HELOC plan. Transaction charges currently are considered material disclosures because they are "finance charges" under § 226.4. The Board proposes to remove transaction charges as material disclosures. The Board does not believe that removing transaction charges from the definition of "material disclosures" would undermine the goals of consumer protection provided by the right of rescission. Board research and outreach for the August 2009 HELOC Proposal indicates that transaction charges typically imposed today are not critical to a consumer's decision about whether to enter into the HELOC plan, or the consumer's decision to rescind the plan. Based on outreach for the August 2009 HELOC Proposal, the Board understands that creditors typically do not impose transaction charges on each advance under the variable-rate feature; instead, transaction charges typically are only imposed on cash advances or foreign transactions made with a credit card that accessed the HELOC plan. While the Board believes that it is important that consumers receive information about cash advance and foreign transaction fees before using a HELOC account to avoid being surprised by these fees, the Board does not believe that these fees are critical to a consumer's decision about whether to enter into the credit transaction or rescind the transaction. For these reasons, the Board proposes to remove transaction charges from the definition of "material disclosures."

Fees for failure to comply with transaction requirements. As discussed above, under the August 2009 HELOC Proposal, a creditor would be required to disclose in the proposed account-opening table any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw requirements. *See* proposed §§ 226.6(a)(2)(xvii) and 226.33(c)(7)(v). In addition, a creditor must disclose in the proposed account-opening table any fee imposed by the creditor for a consumer's failure to comply with any of the transaction requirements or limitations listed above, as well as any minimum outstanding balance and minimum draw requirements. *See* proposed §§ 226.6(a)(2)(xiv) and 226.33(c)(13)(ii). Currently, these fees for failure to comply with the transaction requirements or limitations, as well as any minimum outstanding balance and minimum draw requirements, are considered material disclosures because these fees are "finance charges" under § 226.4.

The Board proposes to remove fees for failure to comply with the transaction requirements or limitations, as well as minimum outstanding balance and minimum draw requirements, as material disclosures. While the Board believes it is important that consumers be informed of these fees before using the HELOC plan to avoid being surprised by these fees, the Board does not believe that these fees are critical to a consumer's decision about whether to enter into the credit transaction or rescind the transaction. In addition, as discussed above, the Board proposes to include the transaction requirements or limitations, as well as minimum outstanding balance and minimum draw requirements, as material disclosures. Thus, a consumer will have an extended right of rescission if a creditor incorrectly discloses (or does not disclose) the transaction requirements or limitations, as well as minimum outstanding balance and minimum draw requirements, to the consumer. The Board believes that it is the transaction requirements or limitations or minimum outstanding balance and minimum draw requirements themselves, rather than the fees for failure to comply with those requirements or limitations, that are critical to a consumer's decisions about whether to enter into the HELOC plan, and whether to rescind the transaction. For these reasons, the Board proposes to remove fees for failure to comply with the transaction requirements or limitations, as well as minimum outstanding balance and minimum draw requirements, from the definition of "material disclosures."

Finance charges not required to be disclosed in the proposed account-opening table. Again, all finance charges on the HELOC plan currently must be disclosed prior to the first transaction under the HELOC plan, and are considered material disclosures. As discussed above, in the August 2009 HELOC Proposal, the Board proposed no longer to require that all finance charges be disclosed prior to the first transaction under the HELOC plan; instead, only finance charges required to be disclosed in the account-opening table would have to be provided in writing before the first transaction under the HELOC plan. "Charges imposed as part of the HELOC plan," as set forth in proposed § 226.6(a)(3), that are not required to be disclosed in the account-opening table would have to be disclosed orally or in writing before the consumer agrees to or becomes obligated to pay the charge. The Board believes that it is appropriate to provide flexibility to creditors regarding disclosure of less significant charges that are not likely to impact a consumer's decision to enter into the credit transaction. Disclosure of these charges soon before a consumer agrees to pay the charge may be more useful to the consumer because the disclosure would come at a time when the consumer would be more likely to notice the disclosure.

Consistent with the August 2009 HELOC Proposal, the Board proposes to exclude finance charges that are not disclosed in the proposed account-opening table from the definition of "material disclosures." The Board does not believe that this would undermine the goals of consumer protection provided by the right of rescission. The Board believes that the proposed account-opening table contains the charges that are most important for consumers to know about before they use a HELOC account in the current marketplace. In consumer testing on HELOCs conducted for the Board for the August 2009 HELOC Proposal, participants could not identify any additional types of fees beyond those included in the proposed account-opening table that they would want to know before they use the HELOC account.

On the other hand, continuing to define finance charges that are not required to be disclosed in the proposed account-opening table as "material disclosures" would undercut the flexibility set forth in the August 2009 HELOC Proposal for creditors to disclose these finance charges at a time after account opening, as long as they are disclosed orally or in writing before the consumer agrees to or becomes obligated to pay the charge. If these finance charges continued to be defined as "material disclosures," creditors as a practical matter would be required to disclose these fees at account opening, to avoid the extended right of rescission. For these reasons, the Board proposes to remove finance charges that are not disclosed in the proposed account-opening table from the definition of "material disclosures."

Description of balance computation methods. Under the August 2009 HELOC Proposal, a creditor would be required to disclose below the account-opening table the name(s) of the balance computation method(s) used by the creditor for each feature of the account, along with a statement that an explanation of the method(s) is provided in the account agreement or disclosure statement. *See* proposed § 226.6(a)(2)(xxii). To determine the name of the balance computation method to be disclosed, a creditor would be required to refer to § 226.5a(g) for a list of commonly-used methods; if the method used is not among those identified, creditors would be required to provide a brief explanation in place of the name. As discussed in the **SUPPLEMENTARY INFORMATION** to the August 2009 HELOC Proposal, the Board believes that the proposed approach of disclosing the name of the balance computation method below the table, with a more detailed explanation of the method in the account-opening disclosures or account agreement, would provide an effective way to communicate information about the balance computation method used on a HELOC plan to consumers, while not detracting from other information included in the proposed account-opening table.

TILA and Regulation Z define the method of determining the balance on which the finance charge will be imposed (*i.e.,* explanation of the balance computation methods) as a material disclosure. TILA Section 103(u); 15 U.S.C. 1602(u); § 226.15(a)(3) n. 36. The Board proposes to exclude this disclosure from the definition of "material disclosures." The Board does not believe that removing information about the balance computation method from the definition of "material disclosures" would undermine the goals of consumer protection provided by the right of rescission. Explanations of the balance computation methods often are complicated and difficult for consumers to understand. In consumer testing on HELOCs conducted for the Board for the August 2009 HELOC Proposal, none of the participants indicated that information about the balance computation methods was information they would use to decide whether to open a particular HELOC account. For these reasons, the Board proposes to remove the disclosure of the balance computation method from the definition of "material disclosures."

Proposed Comments 15(a)(5)(i)–1 and –2

Current comment 15(a)(3)–2 specifies that a creditor must provide sufficient information to satisfy the requirements of § 226.6 for the material disclosures, and indicates that a creditor may satisfy this requirement by giving an initial disclosure statement that complies with the regulation. This comment also provides that failure to give the other required initial disclosures (such as the billing rights statement) or the information required under § 226.5b does not prevent the running of the three-day rescission period, although that failure may result in civil liability or administrative sanctions. In addition, this comment specifies that the payment terms in current footnote 36 to § 226.15(a)(3) apply to any repayment phase in the agreement. Thus, the payment terms described in former § 226.6(e)(2) (redesignated as § 226.6(a)(3)(ii) in the February 2010 Credit Card Rule) for any repayment phase as well as for the draw period are material disclosures.

The Board proposes to move comment 15(a)(3)–2 to proposed comments 15(a)(5)(i)–1 and –2 and revise it consistent with the new definition of "material disclosures" in the proposed regulation. Specifically, proposed comment 15(a)(5)(i)–1 provides that a creditor must make the material disclosures clearly and conspicuously consistent with the requirements of § 226.6(a)(2). A creditor may satisfy the requirement to provide material disclosures by giving an account-opening table described in § 226.6(a)(1) or § 226.33(d)(2) and (d)(4) that complies with the regulation. Failure to provide the required non-material disclosures set forth in §§ 226.6, 226.33, or the information required under § 226.5b does not affect the right of rescission, although such failure may be a violation subject to the liability provisions of TILA Section 130, or administrative sanctions. 15 U.S.C. 1640. In addition, proposed comment 15(a)(5)(i)–2 clarifies that the terms described in § 226.15(a)(5) for any repayment phase as well as for the draw period are material disclosures.

Material Disclosures for Reverse Mortgages

The Board is proposing disclosures for open-end reverse mortgages in § 226.33 that would incorporate many of the disclosures required by § 226.6(a) for all home-equity plans into the reverse mortgage specific disclosures. Proposed § 226.15(a)(5)(i) would contain cross-references to analogous provisions in proposed § 226.33. In addition, as discussed in the section-by-section analysis to § 226.33, some of the proposed material disclosures for home-equity plans do not apply to reverse mortgages and would not be required. Thus, for reverse mortgages, the following disclosures would not be material disclosures:

- The length of the plan, the draw period, and any repayment period;
- An explanation of how the minimum periodic payment will be determined and the timing of payments;
- A statement about negative amortization;
- The credit limit applicable to the plan; and
- Fees for debt cancellation or suspension coverage.

The Board requests comment on whether any of these, or other, disclosures should be material disclosures for reverse mortgages.

15(b) Notice of Right To Rescind

TILA Section 125(a) requires the creditor to disclose clearly and conspicuously the right of rescission to the consumer. 15 U.S.C. 1635(a). It also requires the creditor to provide appropriate forms for the consumer to exercise the right to rescind. Section § 226.15(b) implements TILA Section 125(a) by setting forth format, content, and timing of delivery standards for the notice of the right to rescind for transactions related to HELOC accounts that give rise to the right to rescind. Section 226.15(b) also states that the creditor must deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy if the notice is delivered in electronic form in accordance with the E-Sign Act). The right to rescind generally does not expire until midnight after the third business day following the latest of: (1) The transaction giving rise to the right of rescission; (2) delivery of the rescission notice; and (3) delivery of the material disclosures. TILA Section 125(a); 15 U.S.C. 1635(f); § 226.15(a)(3). If the rescission notice or the material disclosures are not delivered, a consumer's right to rescind may extend for up to three years from the date of the transaction that gave rise to the right to rescind. TILA Section 125(f); 15 U.S.C. 1635(f); § 226.15(a)(3).

As part of the 1980 Truth in Lending Simplification and Reform Act, Congress added TILA Section 105(b), requiring the Board to publish model disclosure forms and clauses for common transactions to facilitate creditor compliance with the disclosure obligations and to aid borrowers in understanding the transaction by using readily understandable language. 12 U.S.C. 1615(b). The Board issued its first model forms for the notice of the right to rescind applicable to HELOC accounts in 1981. 46 FR 20848, Apr. 7, 1981. While the Board has made some changes to the content of the model forms over the years, the current Model Forms G–5 through G–9 in Appendix G to part 226 are generally the same as when they were adopted in 1981.

The Board has been presented with a number of questions and concerns regarding the notice requirements and the model forms. Creditors have raised concerns about the two-copy rule, indicating that this rule can impose litigation risks when a consumer alleges an extended right to rescind based on the creditor's failure to deliver two copies of the notice. In addition, particular problems with the format, content, and timing of delivery of the rescission notice were highlighted during the Board's outreach and consumer testing conducted for this proposal. To address these problems and concerns, the Board proposes to revise § 226.15(b), and the related commentary. As discussed in more detail below, the Board proposes to revise § 226.15(b) to require creditors to provide one notice of the right to rescind to each consumer entitled to rescind. In addition, the Board proposes to revise significantly the content of the rescission notice by setting forth new mandatory and optional disclosures for the notice. The Board also proposes new format and timing requirements for the notice. Moreover, as discussed in more detail in the section-by-section analysis to Appendix G to part 226, the Board proposes to replace the current model forms for the rescission notices in Model Forms G–5 through G–9 with proposed Model Form G–5(A), and two proposed Samples G–5(B) and G–5(C).

15(b)(1) Who Receives Notice

Section 226.15(b) currently states that the creditor must deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy if the notice is delivered in electronic form in accordance with the E–Sign Act). Obtaining from the consumer a written acknowledgment of receipt of the notice creates a rebuttable presumption of delivery. *See* 15 U.S.C. 1635(c). Comment 15(b)–1 states that in a transaction involving joint owners, both of whom are entitled to rescind, both must receive two copies of the notice of the right of rescission. For the reasons discussed in the section-by-section analysis to proposed § 226.23(b)(1) below, the Board proposes to revise § 226.15(b) and comment 15(b)–1 (redesignated as § 226.15(b)(1) and comment 15(b)(1)–1 respectively) to require creditors to provide one notice of the right to rescind to each consumer entitled to rescind.

15(b)(2) Format of Notice

The current formatting requirements for the notice of the right of rescission appear in § 226.15(b) and are elaborated on in comment 15(b)–2. Section 226.15(b) provides that the required information must be disclosed clearly and conspicuously. Comment 15(b)–2 provides that the rescission notice may be physically separate from the material disclosures or combined with the material disclosures, so long as the information required to be included on the notice is set forth in a clear and conspicuous matter. The comment refers to the forms in Appendix G to part 226 as models that the creditor may use in giving the notice.

The Board proposes new format rules in § 226.15(b)(2) and related commentary intended to (1) Improve consumers' ability to identify disclosed information more readily; (2) emphasize information that is most important to consumers who wish to exercise the right of rescission; and (3) simplify the organization and structure of required disclosures to reduce complexity and "information overload." The Board proposes these format requirements pursuant to its authority under TILA Section 105(a). 15 U.S.C. 1604(a). Section 105(a) authorizes the Board to make exceptions and adjustment to TILA to effectuate the statute's purpose, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a). The Board believes that the proposed formatting rules described below would facilitate consumers' ability to understand the rescission right and avoid the uninformed use of credit. The proposed format changes are generally consistent with findings from the Board's consumer testing of rescission notices conducted to prepare this proposal, as well as the consumer testing on HELOC disclosures, credit card disclosures, and closed-end mortgage disclosures conducted in connection with the Board's August 2009 HELOC Proposal, February 2010 Credit Card Rule, and August 2009 Closed-End Proposal, respectively. 74 FR 43428, Aug. 26, 2009; 75 FR 7658, Feb. 22, 2010; 74 FR 43232, Aug. 26, 2009. Testing generally shows that emphasizing terms and costs consumers find important, and separating out less useful information, are critical to improving consumers' ability to identify and use key information in their decision-making process.[18]

Proposed § 226.15(b)(2) requires the mandatory and optional disclosures to appear on the front side of a one-page document, separate from all other unrelated material, and to be given in a minimum 10-point font. Proposed § 226.15(b)(2) also requires that most of the mandatory disclosures appear in a tabular format. During consumer testing for this proposal, participants overwhelmingly preferred a version of a notice of the right to rescind that presented information in a tabular format to a version of a notice that presented information in narrative form. Moreover, the notice would contain a "tear off" section at the bottom of the page, which the consumer could use to exercise the right of rescission. Information unrelated to the mandatory disclosures would not be permitted to appear on the notice.

Proposed comment 15(b)(2)–1 states that the creditor's failure to comply with the format requirements in § 226.15(b)(2) does not by itself constitute a failure to deliver the notice to the consumer. However, to deliver the notice properly for purposes of § 226.15(a)(3), the creditor must provide the mandatory disclosures appearing in the notice clearly and conspicuously, as described in proposed § 226.15(b)(3) and proposed comment 15(b)(3)–1.

Section 226.5(a)(1) generally requires that creditors make the disclosures required by subpart B regarding open-end credit (including the rescission notice) in writing in a form that the consumer may keep. Proposed comment 15(b)(2)–2 cross references these requirements in § 226.5(a)(1) to clarify that they apply to the rescission notice.

[18] *See also Improving Consumer Mortgage Disclosure* at 69 (consumer testing results showed that current mortgage disclosure forms failed to convey key cost disclosures, but that prototype disclosures, which removed less useful information, significantly improved consumers' recognition of key mortgage costs).

15(b)(2)(i) Grouped and Segregated

Current comment 15(b)–2 provides that the rescission notice may be physically separate from the material disclosures or combined with the material disclosures, so long as the information required to be included on the notice is set forth in a clear and conspicuous matter. The Board is concerned that allowing creditors to combine the right of rescission disclosures with other unrelated information, in any format, will diminish the clarity of this key material, potentially cause "information overload," and increase the likelihood that consumers may not read the notice of the right of rescission.

To address these concerns, proposed § 226.15(b)(2)(i) requires the mandatory and any optional rescission disclosures to appear on the front side of a one-page document, separate from any unrelated information. Only information directly related to the mandatory disclosures may be added.

The proposal also requires that certain information be grouped together. Proposed § 226.15(b)(2)(i) requires that disclosure of the type of transaction giving rise to the right of rescission, the security interest, the right to cancel, the refund of fees upon cancellation, the effect of cancellation on the existing line of credit, how to cancel, and the deadline for cancelling be grouped together in the notice. This information was grouped together in forms the Board tested, and participants generally found the information easy to identify and understand. In addition, this proposed grouping ensures that the information about the consumer's rights would be separated from information at the bottom of the notice, which is designed for the consumer to detach and use to exercise the right of rescission.

15(b)(2)(ii) Specific Format

The Board proposes to impose formatting requirements for the rescission notice, to improve consumers' comprehension of the required disclosures. *See* proposed §§ 226.15(b)(2)(i) and (ii). For example, some information would be required to be in a tabular format. The current model forms for the rescission notice provide information in narrative form, which consumer testing participants found difficult to read and understand. However, consumer testing showed that when rescission information was presented in a tabular format, participants found the information easier to locate and their comprehension of the disclosures improved.

The proposal requires the title of the notice to appear at the top of the notice. Certain mandatory disclosures (*i.e.,* the identification of the type of transaction giving rise to the right of rescission, the security interest, the right to cancel, the refund of fees upon cancellation, the effect of cancellation on the existing line of credit, how to cancel, and the deadline for cancelling in proposed §§ 226.15(b)(3)(i)-(vii)) would appear beneath the title and be in the form of a table. If the creditor chooses to place in the notice one or both of the optional disclosures (*e.g.,* regarding joint owners and acknowledgement of receipt as permitted in proposed § 226.15(b)(4)), the text must appear after the disclosures required by proposed §§ 226.15(b)(3)(i)-(vii), but before the portion of the notice that the consumer may use to exercise the right of rescission required by proposed § 226.15(b)(3)(viii). If both optional disclosures are inserted, the statement regarding joint owners must appear before the statement acknowledging receipt. If the creditor chooses to insert an acknowledgement as described in § 226.15(b)(4)(ii), the acknowledgement must appear in a format substantially similar to the format used in Model Form G–5(A) in Appendix G to part 226. The proposal would require the mandatory disclosures required by proposed § 226.15(b)(3) and the optional disclosures permitted under § 226.15(b)(4) to be given in a minimum 10-point font.

15(b)(3) Required Content of Notice

TILA Section 125(a) and current § 226.15(b) require that all disclosures of the right to rescind be made clearly and conspicuously. 15 U.S.C. 1635(a). This requirement restates the general requirement in § 226.5(a)(1) that creditors make the disclosures required under subpart B (including the rescission notice) clearly and conspicuously. Comments 5(a)(1)–1 through –3, as revised by the February 2010 Credit Card Rule, set forth guidance regarding the clear and conspicuous standard contained in § 226.5(a)(1). Proposed comment 15(b)(3)–1 clarifies that the guidance in comments 5(a)(1)–1 and –2 is applicable to the rescission notice.

Current § 226.15(b) provides the list of disclosures that must appear in the notice: (i) An identification of the transaction or occurrence giving rise to the right of rescission; (ii) the retention or acquisition of a security interest in the consumer's principal dwelling; (iii) the consumer's right to rescind the transaction; (iv) how to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's (or its agent's) place of business; (v) the effects of rescission, as described in current § 226.15(d); and (vi) the date the rescission period expires. Current comment 15(b)–3 states that the notice must include all of the information described in § 226.15(b)(1)–(5). This comment also provides that the requirement to identify the transaction or occurrence may be met by providing the date of the transaction. Current Model Forms G–5 through G–9 contain these disclosures. However, consumer testing of the model forms conducted by the Board for this proposal suggests that the amount and complexity of the information currently required to be disclosed in the notice might result in information overload and discourage consumers from reading the notice carefully. The Board also is concerned that certain terminology in the current model forms might impede consumer comprehension of the information.

To address these concerns, the Board proposes to revise the requirements for the notice in new § 226.15(b)(3). Proposed § 226.15(b)(3) removes information required under current §§ 226.15(b)(1)–(5) that consumer testing indicated is unnecessary for the consumer's comprehension and exercise of the right of rescission. The proposed section also simplifies the information disclosed and presents key information in plain language instead of legalistic terms. The Board proposes these revisions pursuant to its authority in TILA Section 125(a) which provides that creditors shall clearly and conspicuously disclose, in accordance with regulations of the Board, to any obligator in a transaction subject to rescission the rights of the obligor. 15 U.S.C. 1635(a).

15(b)(3)(i) Identification of Transaction

Current § 226.15(b) requires a creditor to identify in the notice the transaction or occurrence giving rise to the right of rescission; current comment 15(b)–3 provides that the requirement that the transaction or occurrence be identified may be met by providing the date of the transaction or occurrence. As discussed in more detail in the section-by-section analysis to proposed § 226.15(b)(3)(vii), creditors, servicers, and their trade associations noted that creditors might be unable to provide an accurate transaction date where a transaction giving rise to the right of rescission is conducted by mail or through an escrow agent, as is customary in some states. They noted that in these cases, the date of the transaction giving rise to the right of rescission cannot be identified accurately before it actually occurs. For example, for a transaction by mail, the creditor cannot know at the time of mailing the rescission notice when the consumer will sign the loan documents (*i.e.,* the date of the transaction).

The Board proposes in new § 226.15(b)(3)(i) to retain the requirement that the rescission notice identify the transaction giving rise to the right of rescission. Nonetheless, to address the concerns discussed above, the provision in current comment 15(b)–3 about the date of the transaction satisfying this requirement would be deleted. Instead, the proposal provides that a creditor would identify the transaction giving rise to the right of rescission by disclosing the type of transaction that is occurring. For example, proposed Sample G–5(B) provides guidance on how to satisfy to this disclosure requirement when the rescission notice is given for opening a HELOC account where the full credit line is secured by the consumer's home and is rescindable. In this case, a creditor may meet this disclosure requirement by stating: "You are opening a home-equity line of credit." Proposed Sample G–5(C) provides guidance on how to satisfy this disclosure requirement when the rescission notice is given for a credit limit increase on an existing HELOC account. Here, a creditor may meet this disclosure requirement by stating: "We are increasing the credit limit on your line of credit." The Board believes that identifying in the rescission notice the type of transaction that is triggering the right of rescission is particularly important for HELOCs where a number of transactions give rise to a rescission right, such as account opening, an increase in the credit limit, or an addition of a security interest. The Board believes that identifying the relevant transaction in the rescission notice will clarify for consumers why they are receiving the rescission notice.

15(b)(3)(ii) Security Interest

Current § 226.15(b)(1) requires the creditor to disclose that a security interest will be retained or acquired in the consumer's principal dwelling. For example, current Model Form G–5, which provides a model rescission notice for when a HELOC account is opened, discloses the retention or acquisition of a security interest by stating: "You have agreed to give us a [mortgage/lien/security interest] [on/in] your home as security for the account."

The Board's consumer testing of a similar statement regarding a security interest for its August 2009 Closed-End Proposal showed that very few participants understood the statement. 74 FR 43232, Aug. 26, 2009. The Board is concerned that the current language in Model Forms G–5 through G–9 for disclosure of the retention or acquisition of a security interest might not alert consumers that the creditor has the right to take the consumer's home if the consumer defaults. To clarify the significance of the security interest, proposed § 226.15(b)(3)(ii) requires a creditor to provide a statement that the consumer could lose his or her home if the consumer does not repay the money that is secured by the home. Proposed Sample G–5(B) provides guidance on how to satisfy this disclosure requirement when the rescission notice is given for opening a HELOC account where the full credit line is secured by the consumer's home and is rescindable. In this case, a creditor may meet this disclosure requirement by stating, "You are giving us the right to take your home if you do not repay the money you owe under this line of credit." Consumer testing of this plain-language version of the security interest disclosure showed high comprehension by participants. Proposed Sample G–5(C) provides guidance on how to satisfy this disclosure requirement when the rescission notice is given for a credit limit increase on an existing HELOC account. Here, a creditor may meet this disclosure requirement by stating: "You are giving us the right to take your home if you do not repay the money you owe."

15(b)(3)(iii) Right To Cancel

Current § 226.15(b)(2) requires the creditor to disclose the consumer's right to rescind the transaction. Accordingly, in a section entitled "Your Right to Cancel," current Model Form G–5, which provides a model rescission notice for opening a HELOC account, discloses the right by stating that the consumer has a legal right under Federal law to cancel the account, without costs, within three business days from the latest of the opening date of the consumer's account (followed by a blank to be completed by the creditor with a date), the date the consumer received the Truth in Lending disclosures, or the date the consumer received the notice of the right to cancel. Consumer testing of language similar to the disclosure in current Model Form G–5 showed that the current description of the right was unnecessarily wordy and too complex for most consumers to understand and use.

In addition, during outreach regarding this proposal, industry representatives remarked that consumers often overlook the disclosure that the right of rescission is provided by Federal law. They also noted that the rule generally requiring creditors to delay remitting funds to the consumer until the rescission period has ended, also imposed by Federal law, is not a required disclosure and not included in the current model forms. *See* § 226.15(c). Industry representatives indicated that consumers should be notified of this delay in funding so they are not surprised when they must wait for at least three business days after signing the loan documents to receive any funds. To address these problems and concerns, proposed § 226.15(b)(3)(iii) requires two statements: (1) A statement that the consumer has the right under Federal law to cancel the transaction giving rise to the right of rescission on or before the date provided in the notice; and (2) if § 226.15(c) applies, a statement that Federal law prohibits the creditor from making any funds (or certain funds, as applicable) available to the consumer until after the stated date. Proposed Sample G–5(B) provides guidance on how to satisfy these disclosure requirements when the rescission notice is given for opening a HELOC account where the full credit line is secured by the consumer's home and is rescindable. In this case, a creditor may meet these disclosure requirements by stating: "You have the right under Federal law to cancel this line of credit on or before the date stated below. Under Federal law, we cannot make any funds available to you until after this date." Proposed Sample G–5(C) provides guidance on how to satisfy these disclosure requirements when the rescission notice is given for a credit limit increase on an existing HELOC account. Here, a creditor may meet these disclosure requirements by stating: "You have the right under Federal law to cancel this credit limit increase on or before the date stated below. Under Federal law, we cannot make these funds available to you until after this date."

The Board notes that in some instances the delay of performance requirement in § 226.15(c) does not apply during a rescission period. Specifically, comment 15(c)–1 provides that a creditor may continue to allow transactions under an existing open-end credit plan during a rescission period that results solely from the addition of a security interest in the consumer's principal dwelling. Thus, in those cases, a creditor would not be required to include in the rescission notice a statement that Federal law prohibits the creditor from making any funds (or certain funds, as applicable) available to the consumer until after the stated date.

15(b)(3)(iv) Fees

Current § 226.15(b)(4) requires the creditor to disclose the effects of rescission, as described in current § 226.15(d). The disclosure of the effects of rescission in current Model Forms G–5 through G–9 is essentially a restatement of the rescission process set forth in current §§ 226.15(d)(1)–(3). This information consumes one-third of the space in the model forms, is dense, and uses legalistic phrases. Moreover, in most cases, this information is unnecessary to understand or exercise the right of rescission.

In addition, consumer testing showed that the current model forms do not adequately communicate that the consumer would not be charged a cancellation fee for exercising the right of rescission. Also, the language of the current model forms did not convey that all fees the consumer had paid in connection with the transaction giving rise to the right of rescission would be refunded to the consumer. To clarify the results of rescission for the consumer, the Board proposes in § 226.15(b)(3)(iv) to require a plain-English statement regarding fees, instead of restating the rescission process in current § 226.15(d). Specifically, proposed § 226.15(b)(3)(iv) requires a statement that if the consumer cancels, the creditor will not charge the consumer a cancellation fee and will refund any fees the consumer paid in connection with the transaction giving rise to the right of rescission. Most participants in the Board's consumer testing of these proposed statements understood that the creditor had to return all applicable fees to the consumer, and could not charge fees for rescission. The Board believes that the statement about the refund of fees communicates important information to consumers about their rights if they choose to cancel the transaction. In addition, the Board is concerned that without this disclosure, consumers might believe that they would not be entitled to a refund of fees. This mistaken belief might discourage consumers from exercising the right to rescind where a consumer has paid a significant amount of fees related to opening the line of credit or other transaction that gave rise to the right of rescission.

15(b)(3)(v) Effect of Cancellation on Existing Line of Credit

As discussed above, current § 226.15(b)(4) requires the creditor to disclose the effects of rescission, as described in current § 226.15(d). As part of satisfying this requirement, current Model Forms G–6 through G–9 provide a disclosure of how cancellation of the transaction giving rise to the right of rescission will impact the existing line of credit. (This disclosure is not provided in Model Form G–5, which provides a model form for opening a HELOC account.) For example, current Model Form G–7 provides a model form for an increase in the credit limit on an existing HELOC account. This model form states that "If you cancel, your cancellation will apply only to the increase in your credit limit and to the [mortgage/lien/security interest] that resulted from the increase in your credit limit. It will not affect the amount you presently owe, and it will not affect the [mortgage/lien/security interest] we already have [on/in] your home."

The Board proposes to retain a description of the effects of the cancellation on the existing line of credit. Specifically, proposed § 226.15(b)(3)(v) requires creditors to disclose the following statements, as applicable: (1) A statement that if the consumer cancels the transaction giving rise to the right of rescission, all of the terms of the consumer's current line of credit with the creditor will still apply; (2) a statement that the consumer will still owe the creditor the current balance; and (3) if some or all of that money is secured by the home, a statement that the consumer could lose his or her home if the consumer does not repay the money that is secured by the home. Proposed Sample G–5(C) provides guidance on how to satisfy these disclosure requirements when the rescission notice is given for a credit limit increase on an existing HELOC account. In this case, a creditor may meet these disclosure requirements by stating: "If you cancel this credit limit increase, all of the terms of your current line of credit with us will still apply. You will still owe us your current balance, and we will have the right to take your home if you do not repay that money."

15(b)(3)(vi) How To Cancel

Current § 226.15(b)(3) requires the creditor to disclose how to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's (or its agent's) place of business. Current Model Forms G–5 through G–9 contain a statement that the consumer may cancel by notifying the creditor in writing; the form contains a blank for the creditor to insert its name and business address. The current model forms state that if the consumer wishes to cancel by mail or telegram, the notice must be sent "no later than midnight of," followed by a blank for the creditor to insert a date, followed in turn by the language "(or midnight of the third business day following the latest of the three events listed above)." If the consumer wishes to cancel by another means of communication, the notice must be delivered to the creditor's business address listed in the notice "no later than that time."

Current comment 15(a)(2)–1 states that the creditor may designate an agent to receive the rescission notification as long as the agent's name and address appear on the notice. The Board proposes to remove this comment, but insert similar language into proposed § 226.15(b)(3)(vi) and proposed comment 15(b)(3)–3. Specifically, proposed § 226.15(b)(3)(vi) requires a creditor to disclose the name and address of the creditor or of the agent chosen by the creditor to receive the consumer's notice of rescission and a statement that the consumer may cancel by submitting the form located at the bottom portion of the notice to the address provided. Proposed comment 15(b)(3)–3 states that if a creditor designates an agent to receive the consumer's rescission notice, the creditor may include its name along with the agent's name and address in the notice.

Proposed comment 15(b)(3)–2 clarifies that the creditor may, at its option, in addition to providing a postal address for regular mail, describe other methods the consumer may use to send or deliver written notification of exercise of the right, such as overnight courier, fax, e-mail, or in-person. The Board requires the notice to include a postal address to ensure that an easy and accessible method of sending notification of rescission is provided to all consumers. Nonetheless, the Board would provide flexibility to creditors to provide in the notice additional methods of sending or delivering notification, such as fax and e-mail, which consumers might find convenient.

15(b)(3)(vii) Deadline To Cancel

Current § 226.15(b)(5) requires the creditor to disclose the date on which the rescission period expires. Current Model Forms G–5 through G–9 disclose the expiration date in the section of the notice entitled "How to Cancel." The current model forms provide a blank for the creditor to insert a date followed by the language "(or midnight of the third business day following the latest of the three events listed above)" as the deadline by which the consumer must exercise the right. The three events referenced are the date of the transaction giving rise to right of rescission, the date the consumer received the Truth in Lending disclosures, and the date the consumer received the notice of the right to cancel.

The Board proposes to eliminate the statements about the three events and require instead that the creditor provide the calendar date on which the three-business-day period for rescission expires. *See* proposed § 226.15(b)(3)(vii). Many participants in the Board's consumer testing had difficulty using the three events to calculate the deadline for rescission. The primary causes of errors were: Not counting Saturdays, not identifying Federal holidays, and counting the day the last event took place as day one of the three-business-day period. Alternative text was tested to assist participants in calculating the deadline based on the three events; however, the text added length and complexity to the form without a significant improvement in participant comprehension. Moreover, participants in the Board's consumer testing strongly preferred forms that provided a specific date over those that required them to calculate the deadline themselves. Also, parties consulted during the Board's outreach on this proposal stated that the model forms should provide a date certain for the expiration of the three-business-day period.

One of the dates that serves as the basis for calculating the expiration date is the transaction date. Creditors, servicers, and their trade associations noted, however, that creditors might be unable to provide an accurate expiration date when a transaction giving rise to the right of rescission is conducted by mail or through an escrow agent, as is customary in some states. They pointed out that in these cases, the date of the transaction giving rise to the right of rescission cannot be identified accurately before it actually occurs. For example, for a transaction by mail, the creditor cannot know at the time the rescission notice is mailed when the consumer will sign the loan documents (*i.e.,* the date on which the transaction occurs). Some creditors stated that when a transaction giving rise to the right of rescission is conducted by mail or through an escrow agent, they anticipate dates for the date of the transaction and the deadline for rescission. These creditors stated that they calculate a deadline that provides extra time to consumers, because they cannot accurately predict the date the transaction giving rise to the right of rescission would occur (that is, the date the consumer will sign the documents).

To ensure that consumers can readily identify the deadline for rescinding the transaction giving rise to the right of rescission, proposed § 226.15(b)(3)(vii) specifies that a creditor must disclose in the rescission notice the calendar date on which the three-business-day rescission period expires. If the creditor cannot provide an accurate calendar date on which the three-business-day rescission period expires, the creditor must provide the calendar date on which it reasonably and in good faith expects the three-business-day period for rescission to expire. If the creditor provides a date in the notice that gives the consumer a longer period within which to rescind than the actual period for rescission, the notice shall be deemed to comply with proposed § 226.15(b)(3)(vii), as long as the creditor permits the consumer to rescind through the end of the date in the notice. If the creditor provides a date in the notice that gives the consumer a shorter period within which to rescind than the actual period for rescission, the creditor shall be deemed to comply with the requirement in proposed § 226.15(b)(3)(vii) if the creditor notifies the consumer that the deadline in the first notice of the right of rescission has changed and provides a second notice to the consumer stating that the consumer's right to rescind expires on a calendar date which is three business days from the date the consumer receives the second notice. Proposed comment 15(b)(3)–4 provides further guidance on these proposed provisions.

The proposed approach is intended to provide consumers with accurate notice of the date on which their right to rescind expires while ensuring that creditors do not face liability for providing a deadline in good faith, that later turns out to be incorrect. The Board recognizes that this approach will further delay access to funds for consumers in certain cases where the creditor must provide a corrected notice. Nonetheless, the Board believes that a corrected notice is appropriate; otherwise, consumers would believe based on the first notice that the rescission period ends earlier than the actual date of expiration. The Board, however, solicits comment on the proposed approach and on alternative approaches for addressing situations where the transaction date is not known at the time the rescission notice is provided.

Extended right to rescind. Under TILA and Regulation Z, the right to rescind generally does not expire until midnight after the third business day following the latest of: (1) The transaction giving rise to the right of rescission; (2) delivery of the rescission notice; and (3) delivery of the material disclosures. If the rescission notice or the material disclosures are not delivered, consumer's right to rescind may extend for up to three years from the date of the transaction that gave rise to the right to rescind. TILA Section 125(f); 15 U.S.C. 1635(f); § 226.15(a)(3). In multiple rounds of consumer testing for this proposal, the Board tested statements explaining when a consumer might have up to three years to rescind (the extended right to rescind). The Board found, however, that including such explanations added length and complexity to the notice, and confused consumers. Nonetheless, the Board believes that some disclosure regarding the extended right is necessary for an accurate disclosure of the consumer's right of rescission. Thus, the Board proposes in new § 226.15(b)(3)(vii) to require creditors to include a statement that the right to cancel the transaction giving rise to the right of rescission may extend beyond the date disclosed in the notice, and in such a case, a consumer wishing to exercise the right must submit the form located at the bottom of the notice to either the current owner of the line of credit or the person to whom the consumer sends his or her payments. Proposed Samples G–5(B) and G–5(C) provide examples of how to satisfy these disclosure requirements. For example, proposed Sample G–5(B) provides guidance on how to satisfy these disclosure requirements when the rescission notice is given for opening a HELOC account where the full credit line is secured by the consumer's home and is rescindable. In this situation, a creditor may meet these disclosure requirements by placing an asterisk after the sentence disclosing the calendar date on which the right of rescission expires along with a sentence starting with an asterisk that states: "In certain circumstances, your right to cancel this line of credit may extend beyond this date. In that case, you must submit the bottom portion of this notice to either the current owner of your line of credit or the person to whom you send payments." *See* proposed Samples G–5(B) and G–5(C). Without this statement, the notice would imply that the period for exercising the right is always three business days. In addition, this statement would inform consumers to whom they should submit notification of exercise when they have this extended right to rescind. *See* proposed § 226.15(a)(2). The Board requests comment on the proposed approach to making the consumer aware of the extended right.

15(b)(3)(viii) Form for Consumer's Exercise of Right

Current § 226.15(b)(3) requires the creditor to disclose how to exercise the right to rescind, and to provide a form that the consumer can use to rescind. Current Model Forms G–5 though G–9 explain the consumer may cancel by using any signed and dated written statement, or may use the notice by signing and dating below the statement: "I WISH TO CANCEL."

Section 226.15(b) currently requires a creditor to provide two copies of the notice of the right (one copy if delivered in electronic form in accordance with the E-Sign Act) to each consumer entitled to rescind. The current Model Forms contain an instruction to the consumer to keep one copy of the two notices because it contains important information regarding the right of rescission. The Board tested a model notice form that would allow the consumer to detach the bottom part of the notice form and use it to notify the creditor that the consumer is rescinding the transaction. Participants in the Board's consumer testing said unanimously that, if they wished to exercise the right of rescission, they would use the bottom part of the notice to cancel the transaction. However, a few participants said that they would prepare and send a statement of cancellation in addition to the bottom part of the notice. When asked what they would do if they lost the notice and wanted to rescind, most participants said that they would contact the creditor to obtain another copy of the notice. Almost all participants said that they would make and keep a copy of the notice if they decided to exercise the right.

Based on these findings, proposed §§ 226.15(b)(2)(i) and (3)(viii) require creditors to provide a form at the bottom of the notice that the consumer may use to exercise the right to rescind. The creditor would be required to provide two lines on the form for entry of the consumer's name and property address. The creditor would have the option to pre-print on the form the consumer's name and property address. In addition, a creditor would have the option to include the account number on the form, but may not request that or require the consumer to provide the account number. Proposed comment 15(b)(3)–5 elaborates that creditors are not obligated to complete the lines in the form for the consumer's name and property address, but may wish to do so to identify accurately a consumer who uses the form to exercise the right. Proposed comment 15(b)(3)–5 further explains that at its option, a creditor may include the account number on the form. A creditor would not, however, be allowed to request that or require the consumer to provide the account number on the form, such as by providing a space for the consumer to fill in the account number. A consumer might not be able to locate the account number easily and the Board is concerned that allowing creditors to request a consumer to provide the account number might mislead the consumer into thinking that he or she must provide the account number to rescind.

Current Model Forms G–5 through G–9 contain a statement that the consumer may use any signed and dated written statement to exercise the right to rescind. The Board does not propose to retain such a statement on the rescission notice because consumer testing showed that this disclosure is unnecessary. In fact, the Board's consumer testing results suggested that the statement might cause some consumers to believe that they *must* prepare a second statement of cancellation. Moreover, the Board believes it is unlikely that consumers who misplace the form, and later decide to rescind, would remember the statement about preparing their own documents. Based on consumer testing, the Board expects that consumers would use the form provided at the bottom of the notice to exercise the right of rescission. Participants in the Board's testing said that if they lost the form, they would contact the creditor to get another copy.

In addition, current Model Forms G–5 through G–9 contain a statement that the consumer should "keep one copy" of the notice because it contains information regarding the consumer's rescission rights. This statement would be deleted as obsolete. As discussed in the section-by-section analysis to proposed § 226.15(b)(1), the proposal requires creditors to provide a single copy of the notice to each consumer entitled to rescind. The notice would be revised to permit a consumer to detach the bottom part of the notice to use as a form for exercising the right of rescission while retaining the top portion of the notice containing the explanation of the consumer's rights.

15(b)(4) Optional Content of Notice

Current comment 15(b)–3 states that the notice of the right of rescission may include information related to the required information, such as: a description of the property subject to the security interest; a statement that joint owners may have the right to rescind and that a rescission by one is effective for all; and the name and address of an agent of the creditor to receive notification of rescission.

The Board proposes to continue to allow creditors to include additional information in the rescission notice that is directly related to the required disclosures. Proposed § 226.15(b)(4) sets forth two optional disclosures that are directly related to the mandatory rescission disclosures: (1) A statement that joint owners may have the right to rescind and that a rescission by one owner is effective for all owners; and (2) a statement acknowledging the consumer's receipt of the notice for the consumer to initial and date. In addition, proposed comment 15(b)(4)–1 clarifies that, at the creditor's option, other information directly related to the disclosures required by § 226.15(b)(3) may be included in the notice. For instance, an explanation of the use of pronouns or other references to the parties to the transaction is directly related information that the creditor may choose to add to the notice.

The Board notes, however, that under the proposal, only information directly related to the disclosures may be added to the notice. *See* proposed § 226.15(a)(2)(i). The Board is concerned that allowing creditors to combine disclosures regarding the right of rescission with other unrelated information, in any format, will diminish the clarity of this key material, potentially cause "information overload," and increase the likelihood that consumers may not read the rescission notice.

15(b)(5) Time of Providing Notice

TILA and Regulation Z currently do not specify when the consumer must receive the notice of the right to rescind. Current comment 15(b)–4 states that the creditor need not give the notice to the consumer before the transaction giving rise to the right of rescission, but notes that the rescission period will not begin to run until the notice is given to the consumer. As a practical matter, with respect to the rescission notice that must be given when opening a HELOC account, most creditors provide the notice to the consumer along with the account-opening disclosures and other documents given at account opening.

The Board proposes to require creditors to provide the notice of the right to rescind before the transaction that gives rise to the right of rescission. *See* proposed § 226.15(b)(5). The Board proposes this new timing requirement pursuant to the Board's authority under TILA Section 105(a), which authorizes the Board to make exceptions and adjustments to TILA to effectuate the statute's purposes which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a). The Board believes that this proposed timing rule would facilitate consumers' ability to consider the rescission right and avoid the uninformed use of credit.

TILA and Regulation Z provide that a consumer may exercise the right to rescind until midnight after the third business following the latest of (1) The transaction giving rise to the right of rescission, (2) delivery of the notice of right to rescind, or (3) delivery of all material disclosures. TILA Section 125(a); 15 U.S.C. 1635(a); § 226.23(a)(3). Creditors typically provide the account opening disclosures at closing, and use these disclosures to satisfy the requirement to provide material disclosures. For the right of rescission that arises with respect to account opening, requiring that the rescission notice be given prior to account opening would better ensure that account opening will be the latest of the three events that trigger the three-business-day rescission period (assuming the account-opening disclosures were given no later than account opening). In this way, the three-business-day period would occur directly after account opening, a time during which the consumer may be most focused on the transaction and most concerned about the right to rescind. By tying a creditor's provision of the rescission notice to an event in the lending process of primary importance to the consumer—account opening—this rule might lead consumers to assess the account-opening disclosures and other loan documents with a more critical eye. The Board solicits comment on any compliance or other operational difficulties the proposal might cause. For example, the Board invites comment on problems that could arise from applying this requirement to transactions that give rise to the right of rescission that occur after account opening, such as a credit limit increase on an existing HELOC account.

Current comment 15(b)–4 would be removed as inconsistent with the proposed timing requirement. Proposed comment 15(b)(5)–1 clarifies that delivery of the notice after the transaction giving rise to the right of rescission would violate the timing requirement of § 226.15(b)(5), and the right of rescission does not expire until three business days after the day of late delivery if the notice was complete and correct.

15(b)(6) Proper Form of Notice

Appendix G to part 226 currently contains five model rescission notices, one that corresponds to each of the five transactions that might give rise to a right of rescission. Consumer advocates have expressed concern about creditors failing to complete the model forms properly. For example, some courts have held that notices with incorrect or omitted dates for the identification of the transaction and the expiration of the right are nevertheless adequate to meet the requirement of delivery of notice of the right to the consumer.[19]

To address these concerns, proposed § 226.15(b)(6) provides that a creditor satisfies § 226.15(b)(3) if it provides the model form in Appendix G, or a substantially similar notice, which is properly completed with the disclosures required by § 226.15(b)(3). Proposed comment 15(b)(6)–1 explicitly states that a notice is not properly completed if it lacks a calendar date or has an incorrectly calculated calendar date for the expiration of the rescission period. Such a notice would not fulfill the requirement to deliver the notice of the right to rescind. As discussed in the section-by-section analysis to proposed § 226.15(b)(3)(vii) above, however, a creditor who provides a date reasonably and in good faith that later turns out to be incorrect would be deemed to have complied with the requirement to provide the notice if the creditor complies with proposed § 226.15(b)(3)(vii) and proposed comment 15(b)–4.

15(c) Delay of Creditor's Performance

For the reasons discussed in the section-by-section analysis to § 226.23(c) below, the Board proposes to revise comment 15(c)–5 to state that a creditor may satisfy itself that the consumer has not rescinded by obtaining a written statement from the consumer that the right has not been exercised. The statement must be signed and dated by the consumer only at the end of the three-business-day period.

15(d) Effects of Rescission

For the reasons discussed in the section-by-section analysis to proposed § 226.23(d) below, the Board proposes to revise § 226.15(d) to address the effects of rescission during the initial three-day period following consummation and after that period. Generally, during the initial three-day period, the creditor has not disbursed money or delivered property to the consumer. Proposed § 226.15(d)(1) would provide that when a consumer provides a notice of rescission during this period, the creditor's security interest is automatically void. Within 20 calendar days after receipt after the consumer's notice, the creditor must return any money paid by the consumer and take whatever steps are necessary to terminate its security interest.

Proposed § 226.15(d)(2) would generally apply after the initial three-day period has passed. During this time period, the creditor has typically disbursed money or delivered property to the consumer and perfected its security interest, but the consumer's right to rescind may have expired. Most creditors are reluctant to release a lien under these conditions, and courts are frequently called upon to resolve rescission claims, which increases costs for consumers and creditors. Accordingly, proposed § 226.15(d)(2)(i) would provide a process for the parties to resolve a rescission claims outside of a court proceeding. The proposal would require that within 20 calendar days after receiving a consumer's notice of rescission, the creditor must mail or deliver to the consumer a written acknowledgment of receipt together with a written statement of whether the creditor will agree to cancel the transaction. If the creditor agrees to cancel the transaction, the creditor's acknowledgment of receipt must contain the amount of money or a description of the property that the creditor will accept as the consumer's tender; a reasonable date for tender; and a statement that within 20 calendar days after receipt of tender, the creditor will take whatever steps are necessary to terminate its security interest. The consumer may respond by tendering the amount of money or property described in the written statement. The creditor must take whatever steps are necessary to terminate its security interest within 20 calendar days after receipt of the consumer's tender.

Proposed § 226.15(d)(2)(ii) would address the effect of rescission if the parties are in a court proceeding, the creditor has disbursed money or delivered property to the consumer, and the consumer's right to rescind has not expired. Consistent with the holding of the majority of courts, the proposal would require the consumer to tender before the creditor releases its security interest. As in the current regulation, a court may modify these procedures.

15(e) Consumer's Waiver of Right To Rescind

For the reasons discussed in the section-by-section analysis to proposed § 226.23(e) below, the Board proposes to

[19] *See, e.g., Melfi* v. *WMC Mortgage Corp.,* 568 F.3d 309 (1st Cir. 2009).

provide additional guidance on when a consumer may waive the right to rescind due to a *bona fide* personal financial emergency. The proposed revisions clarify the procedure to be used for such waiver and add new, non-exclusive examples of *bona fide* personal financial emergencies that may justify such waiver and of circumstances that are not a *bona fide* personal financial emergency.

Proposed § 226.15(e) provides that a consumer may modify or waive the right to rescind, after delivery of the notice required by § 226.15(b) and the disclosures required by § 226.6, if the consumer determines that the loan proceeds are needed during the rescission period to meet a *bona fide* personal financial emergency. Proposed § 226.15(e) provides further that to modify or waive the right, each consumer entitled to rescind must give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the consumer's signature. Finally, proposed § 226.15(e) provides that printed forms for the purposes of waiver are prohibited.

Proposed comment 15(e)–1 states that a consumer may modify or waive the right to rescind only after the creditor delivers the notice required by § 226.15(b) and the disclosures required by § 226.6. Proposed comment 15(e)–1 also states that, after delivery of the required notice and disclosures, the consumer may waive or modify the right to rescind by giving the creditor a dated, written statement that specifically waives or modifies the right and describes the *bona fide* personal financial emergency. In addition, proposed comment 15(e)–1 clarifies that a waiver is effective only if each consumer entitled to rescind signs a waiver statement. Further, proposed comment 15(e)–1 clarifies that where there are multiple consumers entitled to rescind, the consumers may, but need not, sign the same waiver statement. Finally, proposed comment 15(e)–1 sets forth a cross-reference to § 226.2(a)(11), which establishes which natural persons are consumers with the right to rescind.

Proposed comment 15(e)–2 states that to modify or waive the right to rescind, there must be a *bona fide* personal financial emergency that requires disbursement of loan proceeds before the end of the rescission period. Proposed comment 15(e)–2 states further that whether there is a *bona fide* personal financial emergency is determined by the facts surrounding individual circumstances. In addition, proposed comment 15(e)–2 clarifies that a *bona fide* personal financial emergency typically, but not always, will involve imminent loss of or harm to a dwelling or harm to the health or safety of a natural person. Proposed comment 15(e)–2 also clarifies that a waiver is not effective if the consumer's statement is inconsistent with facts known to the creditor.

Finally, proposed comment 15(e)–2 provides examples that describe circumstances that are and are not a *bona fide* personal financial emergency. Proposed comment 15(e)–2.i states that examples of a *bona fide* personal financial emergency include the following: (1) The imminent sale of the consumer's home at foreclosure; (2) the need for loan proceeds to fund immediate repairs to ensure that a dwelling is habitable, such as structural repairs needed due to storm damage; and (3) the imminent need for health care services, such as in-home nursing care for a patient recently discharged from the hospital. In each case, those examples assume that loan proceeds are needed during the rescission period.

Proposed comment 15(e)–2.ii states that examples of circumstances that are not a *bona fide* personal financial emergency include the following: (1) The consumer's desire to purchase goods or services not needed on an emergency basis, even though the price may increase if purchased after the rescission period; and (2) the consumer's desire to invest immediately in a financial product, such as purchasing securities. Proposed comment 15(e)–2.iii states that the conditions for a waiver are not met where the consumer's waiver statement is inconsistent with facts known to the creditor. For example, proposed comment 15(e)–2.iii states that the conditions for a waiver are not met where the consumer's waiver statement states that loan proceeds are needed during the rescission period to abate flooding in a consumer's basement, but the creditor is aware that there is no flooding.

Section 226.16 Advertising

Overview

The Board proposes to revise § 226.16(d) to address certain misleading or deceptive practices used in open-end home-secured credit plan advertisements and promote consistency in the advertising rules applicable to open-end and closed-end home-secured credit. First, the Board proposes to revise § 226.16(d)(6) to require advertisements for open-end home-secured credit that state any lower payments that apply for less than the full term of the plan to state also (1) The period of time during which those payments will apply, and (2) the amounts and time periods of other payments that will apply. Second, the Board proposes to add new §§ 226.16(d)(7) through (d)(13), which would prohibit the following seven acts or practices in connection with advertisements for open-end home-secured credit: (i) The use of the term "fixed" to refer to rates or payments, unless certain conditions are satisfied; (ii) comparisons between actual or hypothetical payments or rates and payments or rates available under the advertised plan, unless certain conditions are satisfied; (iii) misleading statements that a plan is supported or endorsed by the government; (iv) misleading use of the name of a consumer's current creditor; (v) misleading claims of debt elimination; (vi) misleading use of the term "counselor;" and (vii) foreign-language advertisements that provide some required disclosures only in English.

In January of 2008, the Board proposed new rules for closed-end mortgage advertising (January 2008 Proposal). *See* 73 FR 1672, January 9, 2008. The Board proposed a new rule requiring additional disclosures about rates and payments to address concerns that advertisements placed undue emphasis on low promotional "teaser" rates or payments, and proposed to prohibit the seven acts or practices listed above in connection with closed-end mortgage advertisements. *See* 73 FR 1672, 1708, January 9, 2008.

The January 2008 Proposal also included a rule regarding disclosure of promotional rates and payments in advertisements for open-end home-secured credit (home-equity lines of credit or HELOCs). Unlike the rule proposed for closed-end mortgages, however, the proposed HELOC rule did not cover all low introductory payments; instead, additional disclosures were required in advertisements that included low rates or payments not based on the index or margin that would apply to rates and payments after the promotional period. *See* 73 FR 1672, 1705, January 9, 2008. Low introductory payments based on the index and margin, such as interest-only payments, were not covered. The Board did not propose to extend the other seven prohibitions to advertisements for HELOC plans, but solicited comment on whether to do so and on whether other acts or practices associated with advertisements for HELOC plans should be prohibited. *See* 73 FR 1672, 1705, January 9, 2008.

Commenters on the January 2008 Proposal were divided on whether to extend the proposed prohibitions to HELOC advertising. Many community banks argued that the misleading or deceptive acts often associated with closed-end mortgage advertisements do not occur in HELOC advertisements. Some consumer groups and state regulators, however, urged the Board to extend all of the prohibitions to HELOCs. Few commenters suggested that Board consider additional prohibitions for HELOC advertising.

In July of 2008, the Board adopted final rules for closed-end mortgage advertising, including both the rates and payments disclosure rule (§ 226.24(f)), and the prohibitions on the seven acts or practices listed above (§§ 226.24(i)(1) through (i)(7)) (2008 HOEPA Final Rule). *See* 73 FR 44522, July 30, 2008. The July 2008 Final Rule also adopted § 226.16(d)(6), regarding disclosure of promotional rates and payments in HELOC advertising. The Board did not extend the prohibitions contained in § 226.24(i) to advertisements for open-end home-secured credit. The Board indicated that it had not been provided with, or found, sufficient evidence demonstrating that advertisements for HELOCs contain deceptive practices similar to those found in advertisements for closed-end mortgage loans. The Board stated, however, that it might consider prohibiting certain misleading or deceptive practices in HELOC advertising as part of its larger review of the rules for open-end home-secured credit.

As part of its review of these rules, Board staff reviewed numerous examples of advertisements for HELOCs to identify advertising practices that could mislead consumers. This research indicated that many advertisements prominently disclose interest-only payments, while disclosing with much less prominence, often in a footnote, that higher payments also will be required during the term of the plan. Many advertisements also include misleading comparisons with other credit products and other misleading terms or statements, or employ practices prohibited in the July 2008 Final Rule for closed-end mortgages.

The Board is now proposing to revise § 226.16(d)(6) to improve disclosure in advertisements of the rates and payments that will apply over the full term of a HELOC and to add new §§ 226.16(d)(7) through (d)(13) to extend the prohibitions in § 226.24(i) applicable to closed-end mortgage advertising to advertising for HELOCs.

The Board solicits comment on the appropriateness of the proposed revisions to the advertising rules for open-end home-secured credit discussed in greater detail below, and on whether other acts or practices associated with advertisements for HELOC plans should be prohibited.

Legal Authority

TILA Section 147, implemented by § 226.16(d), governs advertisements of open-end home-equity plans secured by the consumer's principal dwelling. 15 U.S.C. 1665b. The statute applies to the advertisement itself, and therefore, the statutory and regulatory requirements apply to any person advertising an open-end home-secured credit plan, whether or not the person meets the definition of creditor. *See* comment 2(a)(2)–2. Under the statute, if an advertisement for an open-end home-secured credit plan sets forth, affirmatively or negatively, any of the specific terms of the plan, including any required periodic payment amount, then the advertisement also must clearly and conspicuously state: (i) Any loan fee the amount of which is determined as a percentage of the credit limit and an estimate of the aggregate amount of other fees for opening the account; (ii) in any case in which periodic rates may be used to compute the finance charge, the periodic rates expressed as an annual percentage rate; (iii) the highest annual percentage rate which may be imposed under the plan; and (iv) any other information the Board may by regulation require.

Under TILA Section 105(a), the Board has authority to adopt regulations to ensure meaningful disclosure of credit terms so that consumers will be able to compare available credit terms and avoid the uninformed use of credit. 15 U.S.C. 1604(a).

The Board proposes to use its authority under TILA Sections 147 and 105(a) to require that advertisements for open-end home-equity plans with certain payment and rate information also include specified additional information as described in the proposed rule. *See* proposed §§ 226.16(d)(6), (d)(7), and (d)(8) and proposed comments 16(d)–5, 16(d)–10, and 16(d)–11.

TILA Section 129(*l*)(2) authorizes the Board to prohibit acts or practices in connection with mortgage loans that the Board finds to be unfair, deceptive, or designed to evade the provisions of TILA Section 129. 12 U.S.C. 1639(*l*)(2). The Board proposes to use its authority under TILA Sections 129(*l*)(2) and 105(a), described above, to prohibit certain deceptive practices in HELOC advertising. *See* proposed §§ 226.16(d)(9)–(d)(13) and proposed comment 16(d)–12.

16(d) Additional Requirements for Home-Equity Plans

16(d)(6) Promotional Rates and Payments

Many HELOC advertisements emphasize a low monthly payment as one of the advantages of the product compared to other forms of credit. The monthly payment prominently stated in the advertisement, however, often is an interest-only payment that, for example, would apply only during the draw period and increase substantially during the repayment period or would result in a balloon payment. This may mislead consumers about the actual payments they will be required to make over the life of the plan.

Section 226.16(d)(6), as adopted in the July 2008 Final Rule, addresses the advertisement of promotional rates and payments in HELOC plans. Regarding payments, the rule provides that if an advertisement for a home-equity plan states a "promotional payment," the advertisement must include the following in a clear and conspicuous manner with equal prominence and in close proximity to each listing of the promotional payment: (i) The period of time during which the promotional payment will apply; and (ii) the amounts and time periods of any payments that will apply under the plan (if payments under a variable-rate plan will be determined based on application of an index and margin, the additional disclosed payments must be determined based on application of a reasonably current index and margin). The rule defines a "promotional payment" for a variable-rate plan as any minimum payment (i) that is applicable for less than the full term of the loan and is not derived by applying to the outstanding balance the index and margin used to determine other minimum payments under the plan, and (ii) that is less than other minimum payments under the plan, given an assumed balance.

The rules regarding disclosure of rates and payments in closed-end mortgage advertising (§ 226.24(f)) are more comprehensive than § 226.16(d)(6). Section 226.24(f) generally requires that advertisements for closed-end mortgages that state a rate or payment amount also disclose other rates and payments that will apply over the term of the loan and the time periods during which they apply. In contrast, § 226.16(d)(6) does not address advertisements that emphasize low monthly payments derived by applying the index and margin generally used to determine payments under the plan, such as interest-only payments. Also, as noted, disclosure of payments such as interest-only payments can be problematic in HELOC advertisements. The Board therefore proposes to revise the definition of promotional payment for variable-rate plans in § 226.16(d)(6)(i)(B)(*1*) so that, as in closed-end advertising, the HELOC advertising rule will cover these types of payments.

Specifically, the proposal would eliminate the portion of the current definition of "promotional payment" that restricts the term to payments that are *not* derived from the generally applicable index and margin. Instead, the new definition would be limited to the following portion of the current definition: "For a variable-rate plan, any minimum payment applicable for a promotional period that is less than other minimum payments under the plan derived by applying a reasonably current index and margin that will be used to determine the amount of such payments, given an assumed balance." *See* proposed § 226.16(d)(6)(i)(B)(*1*). Thus, under the proposed rule, a payment would be "promotional" if it is (1) temporary and (2) lower than any payments under the plan based on the index and margin generally applicable to the plan. As a result, under this definition, a "promotional payment" could be based on the generally applicable index and margin, but would have to be lower than other payments under that plan that are also based on the plan's index and margin.

A technical revision would be made to § 226.16(d)(6)(ii)(C), which describes one of the additional disclosures that must be included in advertisements with a promotional payment, to reflect the revised definition. Thus, this additional disclosure would be described as "the amounts and time periods of any payments that will apply under the plan *given the same assumed balance*." *See* proposed § 226.16(d)(6)(ii)(C) (emphasis added).

For example, an advertisement for a variable-rate home-equity plan might state an interest-only monthly payment derived by applying a reasonably current index and margin to an assumed balance. This payment would be considered a promotional payment because it is less than, for example, fully-amortizing monthly payments or a balloon payment that would be required at other times during the life of the plan given the same assumed balance. If an advertisement stated this payment, the advertisement also would be required to state in a clear and conspicuous manner with equal prominence and in close proximity to each listing of that payment: (i) The period of time during which that payment would apply; and (ii) the amounts and time periods of all payments that would apply under the plan given the same assumed balance.

The Board also proposes to revise comment 16(d)–5(i), regarding variable-rate plans, to reflect the revised definition of promotional payment for variable-rate plans and to provide additional guidance on that definition. Revised comment 16(d)–5(i) would state that if the advertised payment is the same as other minimum payments under the plan derived by applying a reasonably current index and margin, and given an assumed balance, it is not a promotional payment. The revised comment would further state that if the advertised payment is less than other minimum payments under the plan based on the same assumptions, it is a promotional payment. The revised comment would give the following example: if the advertised payment is an interest-only payment applicable during the draw period, and minimum payments during the repayment period will be higher because they are based on a schedule that fully amortizes the outstanding balance by the end of the repayment period, or there is no repayment period and a balloon payment would result at the end of the draw period, then the advertised payment is a promotional payment.

The Board also proposes to revise comment 16(d)–5(iii), regarding the amounts and time periods of payments, to include the following example: if an advertisement for a home-equity plan offers a $100,000 line of credit with a 10-year draw period and a 10-year repayment period, and assumes that the entire line is drawn, resulting in an interest-only minimum payment of $300 per month during the draw period, increasing to $750 per month during the repayment period, the advertisement must disclose the amount and time period of each of the two monthly payment streams, with equal prominence and in close proximity to the promotional payment.

The Board also proposes to revise comment 16(d)–5(iv). The comment states that if an advertised payment is calculated in the same way as other payments based on an assumed balance, the fact that the minimum payment could increase if the consumer makes an additional draw does not make the payment a promotional payment. Currently, the comment applies only to variable-rate plans; under the proposed revision, the comment would be applicable to non-variable-rate plans as well as variable-rate plans.

The Board does not propose to revise the definition of promotional payment for plans other than variable-rate plans in § 226.16(d)(6)(i)(B)(*2*) or the definitions and requirements related to promotional rates included in § 226.16(d)(6). Introductory and other payments that trigger the additional disclosure requirements in § 226.16(d)(6)(ii) under the existing rule would continue to do so under the rule as revised.

16(d)(7) Misleading Advertising of "Fixed" Rates and Payments

Use of the term "fixed" is addressed in the open-end credit advertising rules that apply to both home-secured and other open-end credit. Section 226.16(f) provides that an advertisement for open-end credit may not refer to an annual percentage rate as "fixed," or use a similar term, unless the rate will not increase while the plan is open or the advertisement specifies the time period during which the rate will be fixed.

The rules regarding use of the term "fixed" in closed-end mortgage loan advertising (§ 226.24(i)(1)) are different from the § 226.16(f) rules applicable to open-end credit. In particular, whereas the open-end credit rule applies only to descriptions of annual percentage rates as "fixed," the closed-end mortgage rule restricts the use of the term "fixed" to describe rates, payments, or an advertised credit plan as a whole. Advertisements for HELOCs, however, often emphasize the amount of payments under the plan as much as, or more than, rates associated with the plan.

In adopting § 226.24(i)(1) for closed-end mortgage advertisements, the Board noted that some advertisements do not adequately disclose that interest rates or payment amounts are "fixed" only for a limited period of time. The use of the word "fixed" in these advertisements may mislead consumers into believing that the advertised product is a fixed-rate mortgage loan with rates and payments that will not change during the term of the loan. The Board noted that whether the rates and payments for a particular credit product are fixed or variable is a key factor for consumers evaluating the risks and costs associated with that credit. *See* 73 FR 44522, 44587, July 30, 2008.

The Board believes that inaccurate or incomplete statements about whether a rate or payment is fixed would be as misleading in the open-end context as in the closed-end context. The Board therefore proposes to add new § 226.16(d)(7), which would impose requirements regarding use of the term "fixed" on HELOC advertisements similar to those for closed-end mortgage advertisements.

Proposed § 226.16(d)(7) would prohibit the use of the word "fixed" to refer to rates, payments, or home-equity plans in advertisements for variable-rate or other plans in which the payment may increase, unless certain conditions are met. The proposed rule describes the conditions that must be met for three different cases: (i) Advertisements for variable-rate plans; (ii) advertisements for non-variable-rate plans; and (iii) advertisements for both variable- and non-variable-rate plans. In an advertisement for one or more variable-rate plans, "fixed" can be used only if: (i) The phrase "variable rate" appears in the advertisement before the first use of the word "fixed" and is at least as conspicuous as any use of the word "fixed" in the advertisement; and (ii) each use of "fixed" to refer to a rate or payment is accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period.

Under the proposal, in an advertisement solely for non-variable-rate plans where the payment may increase, "fixed" can be used only if each use of "fixed" to refer to the payment is accompanied by an equally prominent and closely proximate statement of the time period for which the payment is fixed and the fact that the payment may increase after that period.

Under the proposal, in an advertisement for both variable- and non-variable-rate plans, "fixed" can be used only if:

(i) The phrase "variable rate" appears in the advertisement with equal prominence to any use of "fixed;" and

(ii) Each use of the word "fixed" to refer to a rate, payment, or plan either:

- Refers solely to the plans for which rates are fixed for the plan term and is accompanied by an equally prominent and closely proximate statement of the time period for which the payment is fixed, and, if applicable, the fact that the payment may increase after that period; or
- Refers to variable-rate plans and is accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed and the fact that the rate may vary or the payment may increase after that period.

The proposed rule would not prohibit use of the term "fixed" in advertisements for home-equity plans, including advertisements for variable-rate plans. For example, some advertisements for variable-rate home-equity plans may state that the consumer has the option to convert a portion of their balance to a fixed rate. Such an advertisement would comply with proposed § 226.16(d)(7) as long as: (i) The phrase "variable rate" appears in the advertisement with equal prominence as any use of the term "fixed" or similar terms; (ii) "fixed" is used solely in reference to the fixed rate conversion option; and (iii) any reference to payments associated with that option that may increase as "fixed" includes an equally prominent and closely proximate statement of the time period for which the payment is fixed and the fact that the payment will increase after that period.

16(d)(8) Misleading Comparisons in Advertisements

For closed-end mortgage loans, an advertisement may not make any comparison between actual or hypothetical credit payments or rates and any payment or rate available under the advertised plan unless certain additional disclosures are made. *See* § 226.24(i)(2). In adopting this provision, the Board noted that the advertised rates or payments used in comparisons included in advertisements for closed-end mortgage loans often were low introductory "teaser" rates or payments that would not apply over the full term of the loan. The Board concluded that such comparisons are deceptive and misleading to consumers unless certain additional disclosures are made. *See* 73 FR 44522, 44587, July 30, 2008.

Board research indicates that many advertisements for open-end home-equity plans compare monthly payments under that plan with the combined monthly payment for other consumer loans, such as credit card, car loan, and personal loan payments. Without adequate disclosure, these comparisons may mislead consumers about the relative advantages and disadvantages of a HELOC. For example, the HELOC payment used in these comparisons often is an interest-only payment that would apply only during the draw period and increase substantially thereafter or would result in a balloon payment. This is problematic because some of the payments in the comparison group, such as car loan payments, may be fully-amortized principal and interest payments. In addition, while HELOCs often have variable interest rates, some of the loans in the comparison group, such as car loans or personal loans, may have fixed rates.

Home-equity plan advertisements that include comparisons such as those described above often explain that the home-equity plan payment used in the comparison is an interest-only payment or that the home-equity plan's interest rate is variable. However, these disclosures often are either wholly or partially in small print, in footnotes, or on the back of a page. The Board believes that additional, prominent disclosure is needed to prevent consumers from being misled by payment comparisons.

The Board therefore proposes to adopt new § 226.16(d)(8), which would impose requirements consistent with those for closed-end mortgage advertising under § 226.24(i)(2). Proposed § 226.16(d)(8) would prohibit an advertisement for a home-equity plan from including any comparison between actual or hypothetical credit payments or rates and any payment or rate that will be available under the advertised plan for a period less than the full term of the plan unless two additional disclosures are made. First, the advertisement must include a clear and conspicuous comparison to the information required to be disclosed under § 226.16(d)(6)(ii) (promotional period and post-promotional rates or payments). Second, if the advertisement is for a variable-rate plan, and the advertised payment or rate is based on the index or margin that will be used to make subsequent rate or payment adjustments over the term of the loan, the advertisement must include an equally prominent statement in close proximity to the payment or rate that the payment or rate is subject to adjustment and the time period when the first adjustment will occur.

Consistent with comment 24(i)–1 for closed-end mortgages, proposed comment 16(d)–10 would clarify that the requirements of § 226.16(d)(8) apply to all advertisements for HELOC plans, including radio and television advertisements. The proposed comment also states that a claim about the amount a consumer may save under the advertised plan, such as "save $400 per month on a balance of $35,000," would constitute an implied comparison between the advertised plan's payment and an actual or hypothetical payment. The requirements of § 226.16(d)(8) therefore would apply.

The Board also proposes to add comment 16(d)–11; the comment would clarify that the requirements of § 226.16(d)(8) apply to comparisons in advertisements for variable-rate plans, because the payments or rates may not be available for the full term of the plan due to variation in the rate, even if the payments or rates shown for the advertised plan are not promotional payments or rates, as defined in § 226.16(d)(6)(i).

16(d)(9) Misrepresentations About Government Endorsement

For closed-end mortgage loans, an advertisement may not make any statement that the loan offered is a "government loan program," "government-supported loan," or otherwise endorsed or sponsored by a Federal, State, or local government entity, unless the advertised loan is in fact an FHA loan, a VA loan, or a loan offered under a similar program that is endorsed or sponsored by a Federal, State, or local government entity. *See* § 226.24(i)(3). In adopting this provision, the Board found these types of advertisements to be deceptive, stating its concern that these advertisements can mislead consumers into believing that the government is guaranteeing, endorsing, or supporting the advertised loan product. *See* 73 FR 44522, 44589, July 30, 2008. The Board further observed that government-endorsed loans often offer certain benefits or features that may be attractive to many consumers and that, as a result, a loan product's association with a government program can be a material factor in the consumer's decision to apply for that particular loan.

The Board believes that false or misleading statements about government endorsement would be as misleading in the context of HELOC advertising as in the closed-end advertising context. To avoid the possibility of home-equity advertisements containing misleading statements about government endorsement in the future, and for consistency between the advertising rules applicable to open-end and closed-end home-secured credit, the Board proposes to prohibit statements in HELOC advertisements that a plan is a "government loan program," "government-supported loan," or is otherwise endorsed or sponsored by any Federal, State, or local government entity, unless the advertisement is for a credit program that is, in fact, endorsed or sponsored by a Federal, State, or local government entity. *See* proposed § 226.16(d)(9).

For closed-end mortgages, comment 24(i)–2 provides an example of a misrepresentation about government endorsement: A statement that the Federal Community Reinvestment Act (CRA) entitles the consumer to refinance his or her mortgage at the low rate offered in the advertisement. The Board does not propose to adopt a parallel comment under § 226.16(d); the example does not appear applicable to HELOCs, because HELOCs generally are not refinanced. However, if a misleading statement about the CRA were made in a home-equity plan advertisement, it would be prohibited under § 226.16(d)(9).

16(d)(10) Misleading Use of the Current Creditor's Name

For closed-end mortgage loans, an advertisement that is not sent by or on behalf of the consumer's current creditor may not use the name of that creditor, unless the advertisement also discloses with equal prominence the name of the person or creditor making the advertisement, and a clear and conspicuous statement that the person making the advertisement is not associated with, or acting on behalf of, the consumer's current creditor. *See* § 226.24(i)(4). In research for the July 2008 Final Rule, the Board found advertisements for home-secured loans that prominently displayed the name of the consumer's current mortgage creditor, but failed to disclose or to disclose adequately that the advertisement is by a mortgage creditor not associated with the consumer's current creditor. The Board found that these advertisements are deceptive because they may mislead consumers into believing that their current creditor is offering the loan advertised, or that the advertisement is promoting a reduction in the consumer's payment amount or rate on his or her current loan, rather than offering to refinance the current loan with a different creditor. *See* 73 FR 44522, 44589, July 30, 2008.

Board research for this proposal has shown that some HELOC advertisements contain misleading uses of the name of the consumer's current creditor. To prevent these misleading statements in home-equity advertisements, and for consistency between the advertising rules applicable to open-end and closed-end home-secured credit, the Board proposes to prohibit the use the name of the consumer's current creditor in a HELOC advertisement that is not sent by or on behalf of the consumer's current creditor, unless the advertisement: (i) Discloses with equal prominence the name of the creditor or other person making the advertisement; and (ii) includes a clear and conspicuous statement that the creditor or other person making the advertisement is not associated with, or acting on behalf of, the consumer's current creditor. *See* proposed § 226.16(d)(10).

16(d)(11) Misleading Claims of Debt Elimination

Section 226.24(i)(5) prohibits advertisements for closed-end mortgage loans that offer to eliminate debt, or to waive or forgive a consumer's existing loan terms or obligations to another creditor. In the July 2008 Final Rule, the Board found these advertisements to be deceptive because they can mislead consumers into believing that they are entering into a debt forgiveness program, rather than merely replacing one debt obligation with another. *See* 73 FR 44522, 44589, July 30, 2008.

The Board has found evidence that some HELOC advertisements contain misleading statements about debt elimination as well. To prevent this practice in HELOC advertisements, and for consistency between the advertising rules applicable to open-end and closed-end home-secured credit, the Board proposes to prohibit misleading claims in a HELOC advertisement that the plan offered will eliminate debt or result in a waiver or forgiveness of a consumer's existing loan terms with, or obligations to, another creditor. *See* proposed § 226.16(d)(11). The Board also proposes to adopt new comment 16(d)–12, parallel to comment 24(i)–3 in the closed-end rule. The proposed comment provides examples of claims that would be prohibited. These include: "Get out of debt;" "Take advantage of this great deal to get rid of all your debt;" "Celebrate life, debt-free;" and "[Name of home-equity plan] gives you an easy-to-follow plan for being debt-free." The proposed comment also clarifies that the rule would not prohibit a HELOC advertisement from claiming that the advertised product may reduce debt payments, consolidate debts, or shorten the term of the debt.

16(d)(12) Misleading Use of the Term "Counselor"

Advertisements for closed-end mortgage loans may not use the term "counselor" to refer to a for-profit mortgage broker or mortgage creditor, its employees, or persons working for the broker or creditor that are involved in offering, originating or selling mortgages. *See* § 226.24(i)(6). Nothing in the rule prohibits advertisements for *bona fide* consumer credit counseling services, such as counseling services provided by non-profit organizations, or *bona fide* financial advisory services, such as services provided by certified financial planners. In the July 2008 Final Rule, the Board found that the use of the term "counselor" is deceptive outside of the context of non-profit organizations and *bona fide* financial advisory services; outside of these circumstances, the term "counselor" is likely to mislead consumers into believing that the creditor or broker has a fiduciary relationship with the consumer and is considering only the consumer's best interest. *See* 73 FR 44522, 44589, July 30, 2008.

Board research for this proposal has yielded evidence of this practice in HELOC advertising. To prevent this practice in HELOC advertising, and for consistency between the advertising rules for open-end and closed-end home-secured credit, the Board proposes to prohibit use of the term "counselor" in a HELOC advertisement to refer to a for-profit broker or creditor, its employees, or persons working for the broker or creditor that are involved in offering, originating or selling home-equity plans. *See* proposed § 226.16(d)(12).

16(d)(13) Misleading Foreign-Language Advertisements

Section 226.24(i)(7) prohibits advertisements for closed-end home-secured mortgages from providing information about some trigger terms or required disclosures, such as an initial rate or payment, only in a foreign language, but providing information about other trigger terms or required disclosures, such as information about the fully-indexed rate or fully-amortizing payment, only in English. Advertisements that provide all trigger terms and disclosures in both English and a foreign language, or advertisements that provide all trigger terms and disclosures entirely in English or entirely in a foreign language, are not affected by this prohibition. In the July 2008 Final Rule, the Board noted that, in general, advertisements for home-secured loans targeted to non-English speaking consumers are an appropriate means of promoting home ownership or making credit available to under-served, immigrant communities. The Board also noted, however, that some of these advertisements provide information about some trigger terms or required disclosures, such as a low introductory "teaser" rate or payment, in a foreign language, but provide information about other trigger terms or required disclosures, such as the fully-indexed rate or fully-amortizing payment, only in English. The Board found that this practice is deceptive because it can mislead non-English speaking consumers who may not be able to comprehend the important English-language disclosures. *See* 73 FR 44522, 44590, July 30, 2008.

The Board believes that advertisements that provide some terms only in English and others only in a foreign language would be as misleading in HELOC advertisements as in closed-end mortgage advertisements. To avoid the possibility of this practice in HELOC advertising, and for consistency between the advertising rules for open-end and closed-end home-secured credit, the Board proposes to prohibit in HELOC advertisements the provision of information about some trigger terms or required disclosures, such as a promotional rate or payment, only in a foreign language, while providing information about other trigger terms or required disclosures, such as information about the fully-indexed rate or fully-amortizing payment, only in English. *See* proposed § 226.16(d)(13).

Section 226.17 General Disclosure Requirements

17(c) Basis of Disclosures and Use of Estimates

Current comment 17(c)(1)–14 provides guidance on assumptions creditors must use in disclosing closed-end reverse mortgages. The guidance in comment 17(c)(1)–14 is still required for creditors to calculate a finance charge and APR for closed-end reverse mortgages. For clarity, the proposal would move the comment into proposed § 226.33(c)(16), which provides the rules for disclosing closed-end reverse mortgages and is discussed in the section-by-section analysis of that section. The comment also clarifies that reverse mortgages where some or all of the appreciation in the value of the property will be shared between the consumer and the creditor are considered variable-rate mortgages, and, therefore, must follow the disclosure rules for variable-rate mortgages. Under the proposal, the content of disclosure for reverse mortgages, including reverse mortgages with shared appreciation features, would be set forth in § 226.33, as discussed in the section-by-section analysis to that section.

17(d) Multiple Creditors; Multiple Consumers

The Board is proposing to amend staff comment 17(d)–2 to clarify that, in rescindable transactions involving more than one consumer, disclosures required by § 226.19(a) need only be provided to one consumer who will be primarily liable on the obligation. For example, if two consumers apply for a covered mortgage loan as co-applicants, with a third consumer acting solely as a guarantor of the debt, only either of the first two consumers must receive the § 226.19(a) disclosures. In addition, the revised comment would clarify that each consumer entitled to rescind, even any such consumer with no legal obligation on the transaction, must receive the material disclosures in § 226.23(a)(5) and the notice of right to rescind in § 226.23(b) prior to consummation.

Background

MDIA amendments to TILA. Prior to the MDIA, TILA and Regulation Z required creditors to provide good faith estimates of transaction-specific disclosures for certain purchase-money mortgage loans secured by the consumer's principal dwelling, within three business days after application ("the early disclosures"). The MDIA extended this requirement for early disclosures to certain closed-end, non-purchase money transactions, including refinance loans, home equity loans, and reverse mortgages.[20] The MDIA also extended the requirement for early disclosures to loans secured by a dwelling other than a consumer's principal dwelling. In addition, the MDIA required creditors to mail or deliver the early TILA disclosures at least seven business days before consummation and, if the APR in the early disclosure becomes inaccurate, provide corrected disclosures that the consumer must receive no later than three business days before consummation. *See* TILA Section 128(b)(2), 15 U.S.C. 1638(b)(2). The MDIA became effective on July 30, 2009.

Final rule implementing the MDIA. The Board published final regulations implementing the MDIA on May 19, 2009 (MDIA Final Rule). 74 FR 23289. The MDIA Final Rule amended § 226.19(a) of Regulation Z to require that, in a closed-end mortgage transaction subject to the Real Estate Settlement Procedures Act (RESPA) that is secured by a consumer's dwelling, the creditor make good faith estimates of the disclosures required by § 226.18 and deliver or place them in the mail not later than the third business day after the creditor receives the consumer's written application.[21] *See* § 226.19(a)(1)(i). The early disclosures must be delivered or placed in the mail not later than the seventh business day

[20] This provision of the MDIA codified action that the Board had taken in the 2008 HOEPA Final Rule, which was to be effective October 1, 2009. 73 FR 44522, July 30, 2008.

[21] The August 2009 Closed-End Proposal would eliminate the qualification that the transaction be subject to RESPA and instead would apply § 226.19(a) to any transaction secured by real property or a dwelling. It also would change the reference to § 226.18 so that it requires good faith estimates of the § 226.38 disclosures that the August 2009 Closed-End Proposal would require for mortgage transactions generally.

before consummation. *See* § 226.19(a)(2)(i). Finally, if the APR stated in the early disclosures becomes inaccurate, the creditor must provide corrected disclosures with all changed terms, which the consumer must receive no later than three business days before consummation.[22] *See* § 226.19(a)(2)(ii).

Transactions involving multiple consumers. Since the MDIA Final Rule, creditors have asked the Board whether, in a transaction involving more than one consumer, every consumer must receive the early and final disclosures.[23] TILA Section 121(a) provides that in such transactions, except transactions subject to the right of rescission, the creditor need only make disclosures to one primary obligor. Section 226.17(d) implements TILA Section 121(a) and further provides that, if the transaction is rescindable, disclosures must be provided to each consumer with the right to rescind. Consumers who have the right to rescind include non-obligors as well as obligors if (i) They have an ownership interest in the property securing the transaction, (ii) their ownership interest would be subject to the creditor's security interest, and (iii) the property securing the transaction is their principal dwelling. *See* §§ 226.23(a)(1), 226.2(a)(11). Creditors have expressed uncertainty over whether, for a rescindable transaction, they must provide early and final disclosures to each obligor and to each non-obligor consumer.

The Board's Proposal

Disclosure requirements for primary obligors. The Board proposes to amend staff comment 17(d)–2 to clarify that, in rescindable transactions involving multiple consumers, the early and final disclosures required by § 226.19(a) need only be made to one consumer who will be a primary obligor. The purpose of the early and final disclosures is to provide consumers with transaction-specific information early enough to use while shopping for a mortgage. Before the MDIA was enacted, only consumers considering a purchase-money transaction received these early disclosures. If multiple obligors were involved in purchase-money transactions, one set of disclosures was deemed sufficient to facilitate consumer shopping under § 226.17(d). The MDIA's purpose is to extend the same early disclosure requirement for purchase-money transactions to non-purchase money transactions. The MDIA did not amend TILA Section 121(a), which provides that only one primary obligor need receive disclosures. Thus, nothing in the MDIA suggests that Congress intended to require that, for rescindable transactions, each obligor receive the early and final shopping disclosures. Accordingly, under proposed comment 17(d)–2, in a rescindable transaction involving multiple obligors only one primary obligor must receive the early and final disclosures required by § 226.19(a).

Disclosure requirements for non-obligor consumers. The Board further proposes to amend comment 17(d)–2 to provide that non-obligor consumers who have a right to rescind need not be given the early and final disclosures required by § 226.19(a). These non-obligors are consumers only for the purpose of rescission under § 226.23. *See* § 226.2(a)(11). The purpose of TILA Section 121(a)'s requirement that each consumer with the right to rescind receive disclosures is to ensure that each such consumer has the necessary information to decide whether to exercise that right. Non-obligor consumers do not need the early disclosures because they are not shopping for credit and comparing different loan offers. Thus, creditors must provide these consumers only with the material disclosures and a notice of the right to cancel before consummation of the transaction. *See* § 226.17(b).

Accordingly, the Board proposes to amend comment 17(d)–2 to clarify that the early and final disclosures required by § 226.19(a) need not be made to each consumer who has the right to rescind. This rule applies in all cases where there are multiple consumers, whether primarily liable, secondarily liable, or not liable at all on the obligation. The Board believes that this interpretation is consistent with the purpose of the § 226.19(a) disclosures. Thus, creditors may provide § 226.19(a) disclosures solely to any one primary obligor in a rescindable transaction. Pursuant to § 226.17(b), however, the creditor must make disclosures before consummation to each consumer who has the right to rescind under § 226.23, regardless of whether the consumer is also an obligor. The proposed revisions to comment 17(d)–2 would contain this guidance. Proposed new comment 19(a)–1 would contain a cross reference to comment 17(d)–2.

Thus, proposed comment 17(d)–2 would address the delivery of § 226.19(a) disclosures to all possible kinds of consumers in a rescindable transaction. For example, assume a rescindable transaction in which two consumers will be primarily liable as co-borrowers, own the collateral property, and occupy it as their principal dwelling, a third consumer will act as a guarantor (and thus is secondarily but not primarily liable) but has no ownership interest in the property, and a fourth consumer will have no liability on the obligation but is entitled to rescind under §§ 226.23(a)(1) and 226.2(a)(11) by virtue of having an ownership interest and residing in the home securing the transaction. The creditor satisfies § 226.19(a) by delivering early and final disclosures to either of the first two consumers. Before consummation, however, the creditor also must deliver material disclosures and the notice of the right to rescind to the other of the first two consumers and to the fourth consumer (but need not deliver them to the third consumer), pursuant to §§ 226.17(b) and 226.23(b).

17(f) Early Disclosures

Section 226.17(f) establishes general timing requirements for corrected disclosures required where disclosures required by Subpart C are given before consummation of a closed-end credit transaction and a subsequent event makes them inaccurate.[24] The Board proposes to revise a cross-reference in comment 17(f)(2)–2 to reflect a proposed change to § 226.22(a)(3), discussed in detail below.

17(f)(2)

Section 226.17(f)(2) provides that, if disclosures required by Subpart C of Regulation Z are given before consummation of a transaction, the creditor must disclose all changed terms before consummation if the APR at the time of consummation varies from the APR disclosed earlier by more than ⅛ of 1 percentage point in a regular transaction or more than ¼ of 1 percentage point in an irregular transaction, as defined in § 226.22(a). Comment 17(f)(2)–1 states that, for purposes of § 226.17(f)(2), a transaction is deemed to be "irregular" in accordance with footnote 46 to § 226.22(a)(3). The Board proposes to revise comment 17(f)(2)–1 to reflect the

[22] The August 2009 Closed-End Proposal would require final disclosures three business days before consummation in all cases, rather than only when the disclosed APR becomes inaccurate. For consistency with the August 2009 Closed-End Proposal, this discussion refers to the disclosures provided three business days prior to consummation as the "final disclosures."

[23] Creditors have noted that practical issues arise for consumers who have the right to rescind but will not be liable on the obligation. They state that in many cases a creditor may not learn of the existence of such consumers until after the early disclosures must be made under § 226.19(a)(1)(i).

[24] Special disclosure timing requirements for transactions secured by a dwelling are set forth in § 226.19(a).

Board's proposal to remove and reserve footnote 46, which defines an irregular transaction, and to integrate its text into proposed § 226.22(a)(3), as discussed below.

226.18 Content of Disclosures

18(k) Prepayment

18(k)(1)

The Board is proposing to amend comment 18(k)(1)–1 to clarify that, on a closed-end transaction, assessing interest for a period after the loan balance has been paid in full is a prepayment penalty, even if the charge results from the "interest accrual amortization" method used on the transaction, as discussed below. The 2008 HOEPA Final Rule defined a class of higher-priced mortgage loans that are subject to certain protections involving prepayment penalties. For example, on a higher-priced mortgage loan, a prepayment penalty may not apply after the second year following consummation or if the prepayment is effected through a refinancing by the creditor or its affiliate. *See* § 226.35(b)(2)(ii). These restrictions on prepayment penalties were effective for applications taken on or after October 1, 2009.

Shortly before the 2008 HOEPA Final Rule took effect, the Board was asked whether the prepayment penalty provisions would apply to certain Federal Housing Administration (FHA) and other loans as of the October 1, 2009 effective date. Specifically, the Board was informed that, when a consumer prepays an FHA loan in full, the consumer must pay interest through the end of the month in which prepayment is made. For example, if a consumer repays an FHA loan in full on April 20, the payoff amount the consumer is required to pay includes the principal balance outstanding as of April 1 and interest calculated on that amount for all 30 days in April, rather than for only the 20 days elapsed before the prepayment.

Under the Board's existing guidance, a prepayment penalty includes "interest charges for any period after prepayment in full is made." *See* Comment 18(k)(1)–1.[25] FHA staff indicated, however, that it has not considered the payment of interest for a period after a loan is prepaid in full as a prepayment penalty and has advised lenders that they need not disclose this practice as a prepayment penalty for FHA loans. FHA staff also explained that, under the FHA program, for purposes of allocating a consumer's payment to accrued interest and principal, all loan payments are treated as being made on the scheduled due date if the payment is made prior to the expiration of the payment grace period. For example, if the grace period expires on the 15th of the month, payments made on the 14th are not treated as late. This method of interest accounting is known as "monthly interest accrual amortization." Under this arrangement, consumers are not penalized for making payments during the grace period because they are treated as made on the scheduled due date. At the same time, however, consumers that make payments before their scheduled due dates, such as on the 20th of the preceding month, also are treated as having paid on the payment due date and do not receive any reduction in interest due.

In response to the concerns about FHA loans and prepayment penalties, Board staff issued an interpretive letter to HUD Secretary Shaun Donovan on September 29, 2009.[26] The letter noted that, although comment 18(k)(1)–1 provides guidance about prepayment penalties, it does not address the specific situation involving loans that use the monthly interest accrual amortization method. In light of FHA's guidance and the fact that the staff commentary does not expressly address this issue in the context of monthly interest accrual amortization, Board staff advised HUD that lenders who have followed this practice in the past have acted reasonably and have complied in good faith with the prepayment penalty provisions of Regulation Z, whether or not the additional interest was treated or disclosed as a prepayment penalty. The letter also noted that Board staff would review the staff commentary and consider whether it should be changed to address specifically this aspect of FHA and other lending programs, including whether the commentary should be changed to treat this practice as a prepayment penalty.

Based on further review and analysis, the Board believes that the charging of interest for the remainder of the month in which prepayment in full is made should be treated as a prepayment penalty for TILA purposes, even when done pursuant to the monthly interest accrual amortization method. As the Board's proposed revision in the August 2009 Closed-End Proposal reflects, there is no loan balance to which the creditor can apply the interest rate once the loan has been paid off. Thus, although the amount the consumer is charged upon prepayment is determined by reference to the interest rate, the charge is not accrued interest because there is no balance against which it could have accrued. Further, because the charge is triggered by prepayment in full, the Board believes that the charge is most appropriately treated as a prepayment penalty.

Accordingly, proposed comment 18(k)(1)–1 would provide that prepayment penalties include charges determined by treating the loan balance as outstanding for a period after prepayment in full and applying the interest rate to such "balance," even if the charge results from the interest accrual amortization method used on the transaction. The proposed comment would explain by example that, under monthly interest accrual amortization, if the amount of interest due on May 1 for the preceding month of April is $3,000, the creditor will require payment of $3,000 in interest whether the payment is made on April 20, on May 1, or on May 10. In this example, if the interest charged for the month of April upon prepayment in full on April 20 is $3,000, the charge constitutes a prepayment penalty of $1,000 because the amount of interest actually earned through April 20 is only $2,000.

The Board also proposed certain other changes to comment 18(k)(1)–1 as part of the August 2009 Closed-End Proposal for conforming, clarity, and organization purposes. For ease of reference, those other proposed changes are reflected in this proposal as well. The Board requests that interested parties limit the scope of their comments to the newly proposed changes to comment 18(k)(1)–1 discussed in the **SUPPLEMENTARY INFORMATION** to this proposed rule.

18(n) Insurance, Debt Cancellation, and Debt Suspension

For the reasons discussed in the section-by-section analyses for §§ 226.4(d)(1) and (d)(3) and 226.6 above, the Board proposes to revise § 226.18(n) to require creditors to provide the disclosures and comply with the requirements of §§ 226.4(d)(1)(i) through (d)(1)(iii) and (d)(3)(i) through (d)(3)(iii) if the creditor offers optional credit insurance, debt cancellation coverage, or debt suspension coverage that is identified in §§ 226.4(b)(7) or (b)(10). For required

[25] In the Board's August 2009 Closed-End Proposal, the Board proposed to revise this comment to clarify that "when the loan balance is prepaid in full, there is no balance to which the creditor may apply the interest rate." 74 FR 43232, 43257, Aug. 26, 2009. The Board noted that no substantive change was intended.

[26] The letter was issued under TILA Section 130(f), which provides that creditors are not liable for any act or omission taken in good faith and that conforms with any interpretation of TILA or Regulation Z issued by a Board official or employee whom the Board has authorized to issue such interpretations. 15 U.S.C. 1640(f).

credit insurance, debt cancellation coverage, or debt suspension coverage, the Board proposes to require the creditor to provide the disclosures required in §§ 226.4(d)(1)(i) and (d)(3)(i), as applicable, except for §§ 226.4(d)(1)(i)(A), (B), (D)(5), (E) and (F).

Section 226.19 Early Disclosures and Adjustable-Rate Disclosures for Transactions Secured by Real Property or a Dwelling

19(a) Mortgage Transactions

Under TILA Section 128(b)(2), as revised by the Mortgage Disclosure Improvement Act (MDIA), a creditor must provide good faith estimates of credit terms (early disclosures) to a consumer within three business days after receiving the consumer's application and at least seven business days before consummation of a closed-end mortgage transaction secured by a dwelling.[27] 15 U.S.C. 1638(b)(2)(A). No person may impose a fee, other than a fee for obtaining the consumer's credit history, in connection with such transaction before the consumer receives the early disclosures. 15 U.S.C. 1638(b)(2)(E). The creditor must deliver or mail the early disclosures at least seven business days before consummation. 15 U.S.C. 1638(b)(2)(A). If the APR changes beyond a specified tolerance, the creditor must provide corrected disclosures, which the consumer must receive no later than three business days before consummation. 15 U.S.C. 1638(b)(2)(D). The consumer may waive a waiting period if the consumer determines that loan proceeds are needed during the waiting period to meet a *bona fide* personal financial emergency. 15 U.S.C. 1638(b)(2)(F). The Board implemented these requirements in § 226.19(a).[28]

The Board proposes to require that any fee paid by a consumer, other than a fee for obtaining the consumer's credit history, be refundable for three business days after the consumer receives the early disclosures. Specifically, if a consumer pays a fee after receiving the early disclosures, the creditor would have to refund such a fee upon the consumer's request made within three business days after a consumer receives the early disclosures. A similar requirement applies to HELOCs under § 226.5b(h) (redesignated § 226.5b(e) in the August 2009 HELOC Proposal). The Board also proposes several revisions to § 226.19(a) and associated commentary to address issues regarding disclosure requirements and limitations on the imposition of fees before a consumer receives the early disclosures. Those proposed revisions include: (1) Clarifying that a counselor or counseling agency may charge a *bona fide* and reasonable fee for housing counseling required for a reverse mortgage insured by HUD (a HECM) or other housing or credit counseling required by applicable law before the consumer receives the early disclosures; (2) providing examples of circumstances that constitute imposing a fee; and (3) providing examples of when an overstated APR is accurate under the tolerances provided in § 226.22.

The Board has received questions whether, in a transaction involving more than one consumer, every consumer must receive the early disclosures and corrected disclosures required by § 226.19(a).[29] The Board proposes to clarify to which consumers creditors must provide the disclosures required by § 226.19(a) in a proposed new comment 17(d)–2, as discussed above in the section-by-section analysis of § 226.17(d). Proposed comment 19(a)–1 states that creditors should utilize comment 17(d)–2 to determine to which consumers a creditor must provide the required disclosures.

Further, the Board proposes to provide additional guidance regarding when a consumer may waive a waiting period under § 226.19(a)(3), where the consumer determines that loan proceeds are needed to meet a *bona fide* personal financial emergency. Those proposed revisions are consistent with the proposed revisions to the provisions for waiver of a rescission period under §§ 226.15(e) and 226.23(e), discussed below in the section-by-section analysis of § 226.23(e).

The Board also proposes to add headings to previously proposed § 226.19(a)(4)(i) through (iii), regarding disclosure requirements for timeshare transactions, for clarity. Finally, the Board proposes to conform headings for commentary on proposed § 226.19 with the headings for § 226.19 previously proposed under the August 2009 Closed-End Proposal. No substantive change is intended by the foregoing proposed technical amendments, which are not discussed again below.

For ease of reference, this proposal republishes revisions to § 226.19(a) and associated commentary previously proposed under the August 2009 Closed-End Proposal. The Board requests that interested parties limit the scope of their comments to the newly proposed changes to § 226.19(a) and associated commentary discussed in detail in the **SUPPLEMENTARY INFORMATION** to this proposed rule.

19(a)(1)

19(a)(1)(ii) Imposition of Fees

TILA Section 128(b)(2)(E) provides that a consumer must receive the early disclosures "before paying any fee to the creditor or other person in connection with the consumer's application for an extension of credit that is secured by the dwelling of a consumer." 15 U.S.C. 1638(b)(2)(E). A creditor or other person may impose a *bona fide* and reasonable fee for obtaining the consumer's credit report before the consumer receives the early disclosures, however. *Id.* Consistent with TILA Section 128(b)(2)(E), § 226.19(a)(1)(iii) provides that a creditor or other person may impose a fee for obtaining a consumer's credit history before the consumer receives the early disclosures. Thus, TILA Section 128(b)(2) and § 226.19(a)(1)(ii) help ensure that consumers receive disclosures while they still are shopping for a loan and before they pay significant fees.

Creditors and other persons have asked the Board what it means to "impose" a fee. To address that question, the Board proposes to add commentary providing several examples of when a fee is imposed. Proposed comment 19(a)(1)(ii)–4 clarifies that a fee is imposed if a consumer is obligated to pay a fee or pays a fee, even if the fee is refundable. This is consistent with the Board's statement when adopting § 226.19(a)(1)(ii) that the fee restriction applies to refundable fees because "[l]imiting the fee restriction to nonrefundable fees * * * would likely undermine the intent of the rule." 74 FR 44522, 44592, July 30, 2008.

Proposed comment 19(a)(1)(ii)–4 states, for example, that a fee is imposed if a creditor takes a consumer's check for payment, whether or not the check is post-dated and/or the creditor agrees

[27] The MDIA is contained in Sections 2510 through 2503 of the Housing and Economic Recovery Act of 2008, enacted on July 30, 2008. Public Law 110–289, 122 Stat. 2654. The MDIA was amended by the Emergency Economic Stabilization Act of 2008, enacted on October 3, 2008. Public Law No. 110–343, 122 Stat. 3765.

[28] Section 226.19(a) also implements the MDIA's timing requirements for timeshare transactions. The Board proposed revisions to § 226.19(a) under the August 2009 Closed-End Proposal. For a detailed discussion of those proposed revisions, *see* 74 FR 43232, 43258, Aug. 26, 2009. The Board is implementing provisions of the MDIA related to disclosures for adjustable-rate mortgages in a separate notice published in today's **Federal Register.**

[29] The August 2009 Closed-End Proposal requires creditors to provide final disclosures that a consumer must receive at least three business days before consummation and corrected disclosures as needed that trigger an additional waiting period, as discussed below in the section-by-section analysis of proposed commentary on § 226.19(a)(2)(iii).

to wait until the consumer receives the disclosures required by § 226.19(a)(1)(ii) to deposit the check. A consumer who gives a creditor or other person a negotiable instrument such as a check for payment has paid a fee. Post-dating a check for a date after the consumer is expected to receive the early disclosures does not prevent the check from being deposited immediately. A consumer's account may be charged when a properly payable check is presented, even if the check is post-dated, unless the consumer gives the bank notice of the post-dating and describes the check with reasonable certainty. *See* U.C.C. 4–401(c). Moreover, a consumer who provides to a consumer a check for payment of fees may feel financially committed to the transaction before he or she has had an opportunity to review the credit terms offered.

For further example, proposed comment 19(a)(1)(ii)–4 states that a fee is imposed if a creditor uses a consumer's credit card or debit card to initiate payment or places a hold on the consumer's account. A hold for fees on a consumer's account may constrain a consumer from applying for a mortgage and receiving early disclosures from multiple creditors, contrary to the intent of § 226.19(a)(1)(ii). A creditor may take account information, however, as long as the creditor does not initiate a charge to the consumer's account.

Many applications for mortgage credit request that a consumer provide information identifying a consumer's accounts, including credit card accounts and checking accounts likely linked to a debit card. The Board believes that providing this information does not likely impede consumers from shopping among credit alternatives, provided the information is not used to initiate payment before the consumer receives the early disclosures. Proposed comment 19(a)(1)(ii)–4 therefore states that a fee is not imposed if a creditor takes a number, code, or other information that identifies a consumer's account before a consumer receives the disclosures required by § 226.19(a)(1)(i), but does not use the information to initiate payment from or place a hold on the account until after the consumer receives the required disclosures.

The Board also proposes to revise comment 19(a)(1)(ii)–1, regarding the timing of fees, to cross-reference the right to a refund of fees imposed within three days after a consumer receives the required disclosures under proposed § 226.19(a)(1)(iv), discussed below in the section-by-section analysis of proposed § 226.19(a)(1)(iv). In addition, the Board proposes to revise comment 19(a)(1)(ii)–2, regarding the types of fees that may not be imposed before a consumer receives the early disclosures, to discuss the treatment of fees for housing or credit counseling. Proposed comment 19(a)(1)(ii)–2 states that under proposed § 226.19(a)(1)(v), if housing or credit counseling is required by applicable law, a *bona fide* and reasonable charge imposed by a counselor or counseling agency is not a "fee" for purposes of § 226.19(a)(1)(ii).

The Board requests comment on the proposed commentary illustrating circumstances where a fee is or is not imposed. In particular, the Board requests comment on whether the proposed commentary appropriately balances consumers' convenience and consumers' ability to shop among loan offers without feeling financially committed to a particular transaction.

Subsequent Creditors

The Board has received questions regarding whether a creditor may accept a consumer's application made through a third party, such as a mortgage broker, where the consumer previously has paid fees in connection with two or more applications made through the third party that were denied or withdrawn. Comment 19(a)(1)(ii)–3.iii addresses the imposition of fees in a case where a third party submits a consumer's written application to a second creditor following a prior creditor's denial, or the consumer's withdrawal, of an application made to the prior creditor. Comment 19(a)(1)(ii)–3.iii states that, if a fee already has been assessed, the new creditor or third party complies with § 226.19(a)(1)(ii) if it does not collect or impose any additional fee until the consumer receives an early mortgage loan disclosure from the new creditor. That is, the fact that the consumer previously has paid a fee in connection with a mortgage transaction does not foreclose a new creditor or third party from accepting or approving the consumer's application.

The Board proposes to revise comment 19(a)(1)(ii)–3.iii to clarify that the comment applies not only to a second creditor, but to any subsequent creditor. The Board also proposes to clarify that a subsequent creditor may impose a fee for obtaining the consumer's credit history before the consumer receives the early disclosures. That proposed revision conforms comment 19(a)(1)(ii)–3.iii with comments 19(a)(1)(ii)–3.i and –3.ii.

Reverse Mortgages Subject to § 226.33

The Board proposes to add a comment 19(a)(1)(ii)–5 to clarify that three provisions regarding imposing fees apply to reverse mortgages. Under current and proposed § 226.19(1)(ii), fees generally may be imposed after a consumer receives the disclosures required by § 226.19(a)(1)(i). The Board is proposing, however, to prohibit the imposition of a *nonrefundable* fee for three business days after a consumer receives the early disclosures. This proposal is discussed in detail below in the section-by-section analysis of proposed § 226.19(a)(1)(iv). Moreover, under the proposal a creditor or any other person may not impose a nonrefundable fee for a reverse mortgage subject to § 226.33 until after the third business day following the consumer's completion of counseling required under proposed § 226.40(b)(1), as discussed in detail below in the section-by-section analysis of proposed § 226.40(b). Proposed comment 19(a)(1)(ii)–5 clarifies that, for reverse mortgages subject to §§ 226.19 and 226.33, creditors and other persons must comply with the restriction on imposing a nonrefundable fee under § 226.40(b)(2) in addition to the restrictions on imposing fees under § 226.19(a)(1)(ii) and (iv). Proposed comment 19(a)(1)(ii)–5 also cross-references additional clarifying commentary under comment 40(b)(2)–4.i.

19(a)(1)(iii) Exception to Fee Restriction

Currently, § 226.19(a)(1)(iii) provides that a creditor or other person may impose a fee for obtaining a consumer's credit history before the consumer receives the disclosures required by § 226.19(a)(1)(i), provided the fee is *bona fide* and reasonable in amount. The Board now proposes to revise § 226.19(a)(1)(iii) to clarify that a *bona fide* and reasonable fee for obtaining a consumer's credit history need not be refundable, notwithstanding the requirement under proposed § 226.19(a)(1)(iv) that neither a creditor nor any other person may impose a nonrefundable fee for three business days after a consumer receives the early disclosures required by § 226.19(a)(1)(i), discussed below.

19(a)(1)(iv) Imposition of Nonrefundable Fees

Background

Section 226.19(a)(1)(ii) provides that neither a creditor nor any other person may impose a fee (other than a fee for obtaining a consumer's credit history) in connection with a consumer's application for a closed-end, dwelling-secured transaction before the consumer receives the early disclosures, as discussed above in the section-by-section analysis of the provision.

Section 226.19(a)(1)(ii) also provides that if the early disclosures are mailed to a consumer, the consumer is considered to have received them three business days after they are mailed. In adopting the fee imposition restriction, the Board stated that in most instances consumers will receive the early disclosures within three business days and that it is common industry practice to deliver mortgage disclosures by overnight courier. 74 FR 44522, 44593, July 30, 2008. The Board stated further that it had contemplated providing a timeframe longer than three business days for the presumption that a consumer has received the early disclosures but believed that the adopted time frame struck a proper balance between enabling consumers to review their credit terms before making a financial commitment and maintaining the efficiency of automated and streamlined loan processing. *Id.*

Concerns have been raised, however, that under the current rule consumers will not necessarily have adequate time to consider the early disclosures before a fee is imposed. If a fee is imposed immediately after a consumer receives the early disclosures, the consumer may feel financially committed to a transaction he or she has not had adequate time to consider. The restriction on imposing fees under the MDIA and Regulation Z are intended to ensure that consumers are not discouraged from comparison shopping by fees, such as an appraisal fee or a rate-lock fee, that cause them to feel financially committed to the transaction.

The Board's Proposal

To address the concerns discussed above, the Board proposes to require that creditors and other persons refund any fees imposed within three business days after the consumer receives the early disclosures if the consumer decides not to proceed with the transaction. The Board makes this proposal pursuant to the Board's authority under TILA Section 105(a), which authorizes the Board to prescribe regulations to carry out TILA's purposes and to prevent circumvention or evasion of TILA's requirements. TILA's purposes include assuring a meaningful disclosure of credit terms to enable consumers more readily to compare available credit terms and to avoid the uninformed use of credit. 15 U.S.C. 1601(a) and 1604(a). Allowing consumers time to consider the early disclosures without incurring fees would promote the informed use of credit, consistent with TILA's purposes. Moreover, the Board believes the proposed refund right is necessary to prevent the frustration of MDIA's purposes. A consumer who pays an application fee immediately upon receiving disclosures may feel committed to proceed on the terms stated in the early disclosures rather than seek better loan terms from the creditor or from other creditors.

Proposed § 227.19(a)(1)(iv) provides that neither a creditor nor any other person may impose a nonrefundable fee for three business days after a consumer receives the early disclosures required by § 226.19(a)(1)(i). (Proposed § 226.19(a)(1)(iii) provides that a fee for obtaining a consumer's credit history need not be refundable under the proposal, however, as discussed above. This is because creditors generally need to review a consumer's credit history to provide meaningful early disclosures.) Proposed § 226.19(a)(1)(iv) also provides that a creditor or other person must refund any fees paid within three business days after the consumer receives those disclosures upon the consumer's request. Proposed § 226.19(a)(1)(iv) provides, however, that the refund right applies only to a refund request the consumer makes within three business days after receiving the disclosures and only if the consumer decides not to enter into the transaction. That is, under the proposal, a consumer does not have a right to obtain a refund of fees if the consumer decides to enter into the transaction. Moreover, after three business days have elapsed after the consumer receives the early disclosures, a consumer has no right to a refund under proposed § 226.19(a)(1)(iv) even if the consumer decides not to enter into the transaction.

The Board recognizes that the proposal may result in some creditors' refraining from imposing any fees (other than a fee for obtaining the consumer's credit history) until four days after a consumer receives the early disclosures (or longer, if there are intervening non-business days), to avoid having to refund fees. Some creditors may not order an appraisal without collecting a fee from a consumer; in such cases, the proposal may result in some delay in the processing of a consumer's transaction. Further, some creditors may not agree to lock-in an interest rate until a consumer pays a rate-lock fee, and interest rates could increase during the refund period. Other creditors may anticipate that few consumers will request a refund and collect fees during the three-business-day refund period, however. Moreover, the Board believes that the proposed refund right for closed-end mortgages is necessary to implement the purposes of the MDIA. A consumer who pays an application fee immediately upon receiving disclosures likely feels constrained to proceed on the terms stated in the early disclosures rather than seek better loan terms from the creditor or from other creditors. In addition, the Board notes that TILA Section 137(e) and § 226.5b(h) provides a substantially similar refund right for HELOCs. 15 U.S.C. 1647(e).

The Board requests comment on all aspects of the proposal to require that any fee imposed within three business days after the consumer receives the early disclosures for a closed-end loan secured by real property or a dwelling be refundable, discussed in more detail below. In particular, the Board requests comment on differences between HELOCs and closed-end mortgages with respect to the timing of loan processing and the types of fees imposed that may make it difficult for creditors to comply with the proposed refund requirement. The Board also requests comments on such differences that may cause the costs of the proposed refund requirement to outweigh its benefits to consumers.

Business day. Section 226.2(a)(6) provides two definitions of "business day." The general definition provides that a "business day" is a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. *See* § 226.2(a)(6) and comment 2(a)(6)–1. For purposes of certain provisions, however, a more precise definition applies; in those cases "business day" means all calendar days except Sundays and specified Federal legal holidays. *See* § 226.2(a)(6) and comment 2(a)(6)–2.

For ease of compliance and for consistency with the refund right for HELOCs under § 226.5b(h), the Board proposes to apply the more precise definition of "business day" for the proposed prohibition on imposing a nonrefundable fee for three business days after a consumer received the early disclosures required by § 226.19(a)(1)(i). Proposed comment 19(a)(1)(iv)–1 states that, for purposes of § 226.19(a)(1)(iv), the term "business day" means all calendar days except Sundays and the legal public holidays referred to in § 226.2(a)(6). It is easier to determine when the refund period ends using the more precise definition. Using the more precise definition also would mean that the standard for determining when a waiting period ends is the same for all creditors.

Using the more precise definition of "business day" would not account for differences in when creditors and other persons are open for business to receive a consumer's refund request, however (although a creditor may provide for a refund request to be made when the creditor is not open for business, for example, through the creditor's Internet Web site). Saturday is a "business day" under the more precise definition, and some persons' offices are not open on Saturdays. Further, if a legal public holiday falls on a weekend, some creditors' offices may observe the holiday on a weekday, but the observed holiday is a "business day" under the more precise definition. *See* comment 2(a)(6)–2. The Board requests comment on whether general definition of a "business day" (a day on which a creditor's offices are open to the public for carrying on substantially all of its business functions) is more appropriate than the more precise definition of a "business day" (all calendar days except Sundays and legal public holidays) to use to determine the period during which a consumer may request a refund.

Refund period. Proposed comment 19(a)(1)(iv)–2 states that a fee may be imposed after the consumer receives the disclosures required under § 226.19(a)(1)(i) and before the expiration of three business days, but the fee must be refunded if, within three business days after receiving the required disclosures, the consumer decides not to enter into a loan agreement and requests a refund. This is consistent with comment 5b(h)–1, regarding collection of fees for home equity lines of credit. Proposed comment 19(a)(1)(iv)–2 also states that, under § 226.19(c), a notice of the right to receive a refund is provided in a publication entitled "Key Questions to Ask about Your Mortgage" proposed under the August 2009 Closed-End Proposal.[30] As previously proposed, that publication must be provided at the time an application form is provided to the consumer or before the consumer pays a nonrefundable fee, whichever is earlier. *See* 74 FR 43232, 43329, Aug. 26, 2009. The proposed notice of the refund right is discussed in detail below.

Proposed comment 19(a)(1)(iv)–2 states further that a creditor or other person may, but need not, rely on the presumption under § 226.19(a)(1)(ii) that a consumer a receives the early disclosures three business days after they are mailed to the consumer or delivered to the consumer by means other than delivery in person. The proposed comment clarifies that if a creditor or other person relies on that presumption of receipt, a nonrefundable fee may not be imposed until after the end of the sixth business day following the day disclosures are mailed or delivered by means other than in person.

Proposed comment 19(a)(1)(iv)–2 also provides examples that illustrate how to determine when the refund period ends. For example, proposed comment 19(a)(1)(iv)–2.i illustrates a case where a creditor receives a consumer's application on Monday, and the consumer receives the early disclosures in person on Tuesday and pays an application fee that same day. Proposed comment 19(a)(1)(iv)–2.i clarifies that the fee must be refundable through the end of Friday, the third business day after the consumer received the early disclosures. For further example, proposed comment 19(a)(1)(iv)–2.ii illustrates a case where a creditor receives a consumer's application on Monday, places the early disclosures in the mail on Tuesday, and relies on the presumption of receipt, such that the consumer is considered to receive the early disclosures on Friday, the third business day after the disclosures are mailed. Proposed comment 19(a)(1)(iv)–2.ii clarifies that if the consumer pays an appraisal fee the next Monday, the fee must be refundable through the end of Tuesday, the third business day after the consumer received the early disclosures and the sixth business day after the disclosures were mailed.

Proposed comment 19(a)(1)(iv)–2.iii illustrates a case where a creditor receives a consumer's application on Monday and places the early disclosures in the mail on Wednesday, and the consumer receives the disclosures on Friday. Proposed comment 19(a)(1)(iv)–2.iii clarifies that if the consumer pays an application fee the following Wednesday, the fee need not be refundable because the refund period expired at the end of the previous day, Tuesday, the third business day after the consumer received the early disclosures.

Reverse mortgages subject to § 226.33. The Board proposes to add a comment 19(a)(1)(iv)–3 to clarify that two provisions regarding imposing nonrefundable fees apply to reverse mortgages. The Board is proposing to prohibit the imposition of a *nonrefundable* fee for three business days after a consumer receives the early disclosures, as discussed in detail below in the section-by-section analysis of proposed § 226.19(a)(1)(iv). Moreover, the Board is proposing to prohibit the imposition of a nonrefundable fee for a reverse mortgage subject to § 226.33 until after the third business day following the consumer's completion of counseling required under proposed § 226.40(b)(1), as discussed in detail below in the section-by-section analysis of proposed § 226.40(b). Proposed comment 19(a)(1)(iv)–3 clarifies that, for reverse mortgages subject to §§ 226.19 and 226.33, creditors and other persons must comply with the restriction on imposing a nonrefundable fee under § 226.40(b)(2) in addition to the restriction on imposing a nonrefundable fee under § 226.19(a)(1)(iv). Proposed comment 19(a)(1)(iv)–3 also cross-references additional clarifying commentary under comment 40(b)(2)–4.ii.

Notice of refund right. The Board proposes to include a notice of the refund right for closed-end mortgages in a proposed Board publication entitled "Key Questions to Ask About Your Mortgage," which under proposed § 226.19(c)(1) and (d) of the August 2009 Closed-End Proposal is provided when an application form is provided to a consumer. *See* 74 FR 43232, 43329, Aug. 26, 2009. The proposed notice reads as follows: "You cannot be charged a fee, other than a credit history fee, until you get disclosures. If you do not want the loan, you have a right to a fee refund, except for a credit history fee, for three days after you get the disclosures." The Board requests comment on the content of the proposed notice of the refund right under proposed § 226.19(a)(iv). *See* Attachment B.

The Board also solicits comment regarding the timing and placement of the refund right notice for closed-end mortgages. On the one hand, notifying consumers of a refund right in a "Key Questions" publication may help consumers to comparison shop with confidence, knowing that they need not incur fees before they decide to proceed with a transaction. On the other hand, if a consumer pays a fee within three business days after receiving the early disclosures, the consumers may not remember that the fee is refundable. The Board requests comment regarding whether notice of the refund right under proposed § 226.19(iv) should be included in a "Key Questions" document provided when an application form is provided to the consumer, in transaction-specific disclosures provided soon after a creditor receives a consumer's application, in both documents, or in some other manner.

19(a)(1)(v) Counseling Fee

The Board has received questions regarding whether § 226.19(a)(2)(ii) prohibits the imposition of a fee for housing counseling required before a creditor may process an application for a reverse mortgage that is insured by the

[30] The proposed publication was published at 74 FR 43232, 43425, Aug. 26, 2009.

Federal Housing Administration of HUD (known as a Home Equity Conversion Mortgage or HECM), before the consumer receives the early disclosures. The MDIA's prohibition of imposing fees (other than a fee for obtaining a consumer's credit history) before a consumer receives the early disclosures is designed to help ensure that consumers receive the early disclosures without being financially committed to a transaction. That prohibition can facilitate comparison shopping of loans by consumers.

The housing counseling requirement for HECMs is intended to ensure that consumers considering a reverse mortgage receive information about the costs, benefits, and features of HECMs. This information may assist consumers in deciding whether to apply for a reverse mortgage, or seek other financial options. The Board believes that the information consumers receive from HECM housing counseling improves their ability to make such a decision, and to comparison shop for loans, as does the MDIA's prohibition on imposing fees before a consumer receives the early disclosures. The Board also believes that a fee assessed for HECM housing counseling is not likely to constrain a consumer from applying for loans with multiple creditors. In contrast with fees that different creditors each may impose, such as an application fee, a fee for HECM housing counseling need be paid only once. A consumer's completion of HECM housing counseling satisfies the counseling requirement with respect to any HECM application the consumer makes within 180 days, as discussed below in the section-by-section analysis of proposed § 226.40(b)(3).

For the foregoing reasons, the Board does not believe that Congress intended the MDIA's fees restriction to apply to fees for HECM housing counseling that are imposed before the consumer receives the early TILA disclosures. Proposed § 226.19(a)(1)(v) provides that if housing or credit counseling is required by applicable law, a *bona fide* and reasonable charge imposed by a counselor or counseling agency for such counseling is not a "fee" for purposes of § 226.19(a)(1)(ii). Proposed § 226.19(a)(1)(v) and proposed comment 19(a)(1)(v)–1 state further that such a counseling fee need not be refundable under proposed § 226.19(a)(1)(iv). Proposed comment 19(a)(1)(v)–1 also states that a HECM counseling fee is an example of a fee that may be imposed before a consumer receives the early disclosures.

The example of a HECM counseling fee is illustrative and not exclusive. Credit or housing counseling may be required by applicable law for a closed-end mortgage transaction other than a HECM, to help consumers make informed credit decisions. Proposed § 226.19(a)(1)(ii) therefore applies broadly to a fee for credit or housing counseling required by applicable law. The Board solicits comment about whether there are other types of fees that should not be considered imposed in connection with a consumer's application for a mortgage transaction, for purposes of the fee imposition restriction under § 226.19(a)(1)(ii).

19(a)(2)

19(a)(2)(i) Seven-Business-Day Waiting Period

Section 226.19(a)(2)(i) provides that a creditor must deliver or place in the mail the early disclosures required by § 226.19(a)(1)(i) no later than the seventh business day before consummation of the transaction. Comment 19(a)(2)(i)–1 states that the seven-business-day waiting period begins when the creditor delivers the early disclosures or places them in the mail, not when the consumer receives or is deemed to have received the early disclosures. (By contrast, the three-business-day waiting period after a creditor makes corrected disclosures is determined based on when the consumer receives the corrected disclosures. § 226.19(a)(2)(ii); comments 19(a)(2)(ii)–1 and –3.) Comment 19(a)(2)(i)–1 states, for example, that if a creditor delivers the early disclosures to a consumer in person or places them in the mail on Monday, June 1, consummation may occur on or after Tuesday, June 9, the seventh business day following delivery or mailing of the early disclosures.

The Board has received questions regarding how delivering or mailing the early disclosures on a Sunday or a legal public holiday affects when the seven-business-day waiting period ends. The fact that Sundays and legal public holidays are not business days for purposes of waiting periods under § 226.19(a)(2) (*see* comment 19(a)(2)–1) does not affect when the seven-business-day waiting period ends, because the first day of the waiting period is the first business day *after* the early disclosures are delivered or placed in the mail. This is clarified by the example provided in comment 19(a)(2)(i)–1, discussed above. The Board proposes to revise comment 19(a)(2)(i)–1 for clarity. The Board proposes further to revise the example in comment 19(a)(2)(i)–1 to be based on a case where the early disclosures are delivered or placed in the mail on Sunday, for additional clarity.

Proposed comment 19(a)(2)(i)–1 states that the seven-business-day waiting period after a creditor mails or delivers the early disclosures is counted starting with "the first business day after" (rather than "when") the creditor delivers the early disclosures or places them in the mail. Proposed comment 19(a)(2)(i)–1 states further, for example, that if a creditor delivers the early disclosures to a consumer in person or places them in the mail on Sunday, May 31, consummation may occur on or after Monday, June 8, the seventh business day following delivery or mailing of the early disclosures.

The proposed revisions are technical amendments for clarity and no substantive change is intended. The examples provided in existing commentary regarding when a consumer is presumed to receive disclosures or when a waiting period ends illustrate that such period is counted starting with the day after disclosures are mailed (not the day disclosures are mailed). *See, e.g.,* comments 19(a)(2)(ii)–1 and –4.

19(a)(2)(iii) Additional Three-Business-Day Waiting Period

Section 226.19(a)(2)(ii) provides that a creditor must make corrected disclosures with all changed terms if the APR disclosed in the early disclosures required by § 226.19(a)(1)(i) becomes inaccurate, as defined in § 226.22. (Section 226.22 is discussed in detail below in connection with proposed revisions.) Under the August 2009 Closed-End Proposal, the Board proposed to require creditors to provide a "final" TILA disclosure in all cases for closed-end mortgage transactions secured by a dwelling or real property; a consumer would have to receive those disclosures at least three business days before consummation.[31] The Board also proposed two alternative requirements for corrected disclosures thereafter, each under proposed § 226.19(a)(2)(iii). Under Alternative 1, a creditor must provide corrected disclosures if any disclosed term becomes inaccurate. Under Alternative 2, the creditor must provide corrected disclosures only if the disclosed APR becomes inaccurate under § 226.19(a)(2)(iv) or if a fixed-rate mortgage becomes an adjustable-rate mortgage.[32] The Board proposes

[31] For a detailed discussion of the proposed requirement for final disclosures and alternative proposals for corrected disclosure requirements, see 74 FR 43232, 43258–43262, Aug. 26, 2009.

[32] Under proposed § 226.19(a)(2)(iv), an APR disclosed under proposed § 226.19(a)(2)(ii) or (iii) is

Continued

revisions to commentary under both Alternative 1 and Alternative 2, discussed in detail below.

Alternative 1—Proposed § 226.19(a)(2)(iii)

Under Alternative 1, proposed comment 19(a)(2)(iii)–1 discusses whether or not an APR change requires a creditor to provide corrected disclosures, after providing final disclosures. The comment is intended to clarify that if the APR changes but the disclosed APR is accurate under the applicable tolerance, a creditor may provide corrected disclosures at consummation. The Board proposes to revise proposed comment 19(a)(2)(iii)–1 under Alternative 1 to clarify that the comment is limited to cases where only the APR changes. If a term other than the APR changes, the creditor must provide corrected disclosures that the consumer must receive at least three business days before consummation, even if the disclosed APR is accurate.

Alternative 2—Proposed § 226.19(a)(2)(iii)

Section 226.19(a)(2)(ii) provides that a creditor must make corrected disclosures with all changed terms if the APR disclosed in the early disclosures required by § 226.19(a)(1)(i) becomes inaccurate, as defined in § 226.22. The Board has clarified that corrected disclosures are not required as a result of APR changes if the disclosed APR is accurate under the tolerances in § 226.22. 74 FR 23289, 23293, May 19, 2009 (final rule implementing the MDIA). The Board also has explained that, under § 226.22(a)(4), a disclosed APR is considered accurate and does not trigger corrected disclosures if it results from a disclosed finance charge that is greater than the finance charge required to be disclosed (*i.e.,* the finance charge is overstated). 74 FR 43232, 43261, Aug. 26, 2009. Nevertheless, the Board continues to receive questions regarding the application of the special APR tolerances for mortgage transactions under § 226.22(a)(4) and (5) to the requirement to provide corrected disclosures under § 226.19(a)(2)(ii).

To address those questions, the Board proposes to revise certain examples in the commentary under Alternative 2 to reflect that all of the tolerances under § 226.22, not only the tolerances under § 226.22(a)(2) and (3), apply in determining whether a disclosed APR is accurate.[33] As proposed under the August 2009 Closed-End Proposal, comment 19(a)(2)(iii)–1 states that, if a disclosed APR changes so that it is not accurate under § 226.19(a)(2)(iv) or an adjustable-rate feature is added, the creditor must make corrected disclosures of all changed terms so that the consumer receives them not later than the third business day before consummation. Proposed comment 19(a)(2)(iii)–1 also contains an example that illustrates when consummation may occur in such case. The Board proposes to remove the example from comment 19(a)(2)(iii)–1 and insert a cross-reference to a more detailed example in comment 19(a)(2)(iii)–4.

The Board also proposes to revise proposed comment 19(a)(2)(iii)–4 to clarify that an APR disclosed for a regular transaction is considered accurate not only if the APR is accurate under the tolerance of ⅛ of 1 percentage point under § 226.22(a)(2), but also if the disclosed APR is accurate under the special tolerance for mortgage transactions set forth in § 226.22(a)(4) or (a)(5) (and no other tolerance applies under proposed § 226.19(a)(2)(iv)). Similarly, an APR disclosed for an irregular transaction is accurate not only if the APR is accurate under the tolerance of ¼ of 1 percentage point for an irregular transaction under § 226.22(a)(3), but also if the disclosed APR is accurate under the special tolerance for mortgage transactions set forth in § 226.22(a)(4) or (a)(5) (and no other tolerance applies under proposed § 226.19(a)(2)(iv)).

Under the August 2009 Closed-End Proposal, proposed comment 19(a)(2)(iii)–2 states that, if corrected disclosures are required under proposed § 226.19(a)(2)(iii), a creditor may provide a complete set of new disclosures or may redisclose only the changed terms. This is consistent with current comment 19(a)(2)(ii)–2.

The Board proposes to revise proposed comment 19(a)(2)(iii)–2 under Alternative 2 to state that if a creditor does not provide a complete set of new disclosures, corrected disclosures must contain the changed terms *and* certain general disclosures required by previously proposed § 226.38(f) and (g) ("no obligation," security interest, "no refinance guarantee," and tax deductibility statements) and the identities of the creditor and loan originator.[34] The Board believes that requiring the foregoing disclosures in corrected disclosures would provide important information to consumers and would impose minimal, if any, burdens on creditors.

19(a)(3) Consumer's Waiver of Waiting Period Before Consummation

TILA Section 128(b)(2)(E), added by the MDIA, provides that a consumer may waive or modify the waiting periods between when a creditor provides early disclosures or corrected disclosures and consummation of a closed-end, dwelling-secured transaction, if the consumer determines that the extension of credit is needed to meet a *bona fide* personal financial emergency.[35] 15 U.S.C. 1638(b)(2). The waiver statement must bear the signature of "all consumers entitled to receive the disclosures" required by TILA Section 128(b)(2). *Id.* The Board implemented TILA Section 128(b)(2)(E) in § 226.19(a)(3). Section 226.19(a)(3) provides that, to modify or waive a waiting period required by § 226.19(a)(2), a consumer must give the creditor a dated, written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all the consumers primarily liable on the legal obligation.[36] Printed forms are prohibited.

The requirements for waiving a pre-consummation waiting period under § 226.19(a)(3) are substantially similar to the requirements for waiving a pre-consummation waiting period under § 226.31(c)(1)(iii) and waiving the right to rescind under §§ 226.15(e) and 226.23(e). Over the years, creditors have asked the Board to clarify the procedures for waiver and provide additional examples of a *bona fide* personal financial emergency.

considered accurate as provided by § 226.22, except that in certain specified circumstances the APR is considered accurate if the APR decreases from the previously disclosed APR. *See* 74 FR at 43261, 43326–43327.

[33] The proposed revision is not necessary in the commentary on § 226.19(a)(2)(iii) under Alternative 1, because Alternative 1 would require creditors to provide corrected disclosures if any disclosed terms become inaccurate. A change that affects the APR likely would affect other terms and trigger corrected disclosures whether or not the disclosed APR becomes inaccurate. Therefore, commentary that illustrates whether or not a creditor must provide corrected disclosures where the APR changes is not provided under Alternative 1.

[34] For a discussion of those proposed general disclosures, see 74 FR 43232, 43309–43312, Aug. 26, 2009.

[35] Currently, if the APR stated in early disclosures changes beyond a specified tolerance, creditors must provide corrected disclosures that the consumer must receive at least three business days before consummation. § 226.19(a)(2)(ii). Under the August 2009 Closed-End Proposal, the Board proposed to revise § 226.19(a)(2)(ii) to require creditors, in all cases, to provide final disclosures that a consumer must receive at least three business days before consummation of a credit transaction secured by real property or a dwelling, as discussed above.

[36] A consumer need not waive a waiting period entirely and may modify—that is, shorten—a waiting period. References in this Supplementary Information and in commentary on § 226.19(a)(3) to waiver of a waiting period also refer to modification of a waiting period.

For the reasons discussed in the section-by-section analysis of § 226.23(e), the Board proposes to provide additional guidance regarding when a consumer may waive a waiting period. The proposed revisions clarify the procedure to be used for a waiver. The proposed revisions also provide new examples of a *bona fide* personal financial emergency, in addition to the current example of an imminent foreclosure sale. *See* comment 19(a)(3)–1. The Board proposes these new examples as non-exclusive illustrations of other *bona fide* personal financial emergencies that may justify a waiver of the right to rescind. The Board also proposes examples of circumstances that are not *bona fide* personal financial emergencies. The Board requests comment on all aspects of the proposed revisions to § 226.19(a)(3).

Procedures

Proposed § 226.19(a)(3) and associated commentary clarify that a consumer may modify or waive a waiting period, after the consumer receives the notice required by § 226.38, if each consumer primarily liable on the obligation signs and gives the creditor a dated, written statement that specifically modifies or waives the waiting period and describes the *bona fide* personal financial emergency. Currently, comment 19(a)(3)–1 clarifies that the *bona fide* personal financial emergency is one in which loan proceeds are needed before the waiting period ends. Proposed § 226.19(a)(3) incorporates that provision into the regulation. Other proposed revisions to § 226.19(a)(3) clarify that each consumer primarily liable on the obligation may sign a separate waiver statement; a proposed conforming amendment to comment 19(a)(3)–1 is discussed below. (Disclosure requirements for closed-end credit transactions that involve multiple consumers are discussed above in the section-by-section analysis of proposed § 226.17(d).)

Currently, comment 19(a)(3)–1 states that a consumer may modify or waive the right to a waiting period required by § 226.19(a)(2) only after "the creditor makes" the disclosures required by § 226.18. (Under the August 2009 Closed-End Proposal, § 228.38, rather than § 226.18, sets forth the required content for mortgage disclosures. *See* 74 FR 43232, 43333, Aug. 26, 2009.) Both current and proposed § 226.19(a)(3) provide that a consumer must receive the required disclosures before waiving a waiting period. The Board therefore proposes to revise comment 19(a)(3)–1 to clarify that waiver is permitted only after "the consumer receives" the required disclosures. The Board proposes further to revise comment 19(a)(3)–1 to clarify that where multiple consumers are primarily liable on the legal obligation and must sign a waiver statement, the consumers may, but need not, sign the same waiver statement.

The Board also proposes to move the discussion of circumstances that are a *bona fide* personal financial emergency in comment 19(a)(3)–1 to a new comment 19(a)(3)–2, to conform the waiver commentary under § 226.19(a)(3) with the waiver commentary under §§ 226.15(e) and 226.23(e). Proposed comment 19(a)(3)–2 is discussed below.

Bona Fide Personal Financial Emergency

Proposed comment 19(a)(3)–2 provides clarification regarding *bona fide* personal financial emergencies. The proposed comment contains the current guidance under existing comment 19(a)(3)–1, that whether the conditions for a *bona fide* personal financial emergency are met is determined by the facts surrounding individual circumstances.

Proposed comment 19(a)(3)–2 also states that a *bona fide* personal financial emergency typically, but not always, will arise in situations that involve imminent loss of or harm to a consumer's dwelling or imminent harm to the health or safety of a consumer. Proposed comment 19(a)(3)–2 states further that a waiver is not effective if a consumer's waiver statement is inconsistent with facts known to the creditor. The comment is not intended to impose a duty to investigate consumer claims.

In addition, proposed comment 19(a)(3)–2 states that creditors may rely on examples and other commentary provided in comment 23(e)–2 to determine whether circumstances are or are not a *bona fide* personal financial emergency. That commentary is discussed in detail below in the section-by-section analysis of § 226.23(e).

19(b) Adjustable-Rate Loan Program Disclosures

Section 226.19(b) currently requires special disclosure for closed-end transactions secured by a consumer's principal dwelling with a term greater than one year for which the APR may increase after consummation. Section 226.19(b) requires creditors to provide, among other things, detailed disclosures about ARM programs (ARM program disclosures) if a consumer expresses an interest in an ARM. ARM program disclosures must disclose the index or formula used in making adjustments and a source of information about the index or formula, among other information. § 226.19(b)(2)(ii). If interest rate changes are at the creditor's discretion, this fact must be disclosed, and if an index is internally defined, such as by a creditor's prime rate, the ARM program disclosures should either briefly describe that index or state that interest-rate changes are at the creditor's discretion. Comment 19(b)(2)(ii)–2.

Under the August 2009 Closed-End Proposal, the Board proposed to revise § 226.19(b) to change the content and format of ARM program disclosures required for ARMs defined in proposed § 226.38(a)(3), with certain exclusions.[37] With respect to an ARM's index, the Board proposed to require that ARM program disclosures state the index or formula used in making adjustments, a source of information about the index or formula, and an explanation of how the interest rate will be determined when adjusted, including an explanation of how the index is adjusted. *See* proposed § 226.19(b)(1)(iii), 74 FR 43232, 43328, Aug. 26, 2009. The August 2009 Closed-End Proposal retained comment 19(b)(2)(ii)–2, regarding interest rate changes based on an internally defined index, and proposed to redesignate that comment as comment 19(b)(1)(iii)–2.

As discussed in detail below, the Board requests comment on whether to require the use of an index that is outside a creditor's control and publicly available. The Board also proposes a minor conforming amendment to comment 19(b)–1 consistent with the Board's proposal, for reverse mortgages, to require creditors to provide disclosures specific to reverse mortgages rather than general disclosures for closed-end mortgages. That proposal is discussed below in the section-by-section analyses of proposed § 226.19(e) and 226.33(b).

Index Within Creditor's Control

TILA does not prohibit using an index within a creditor's control for purposes of a closed-end ARM. For open-end credit transactions, however, TILA restricts the use of such an index. TILA Sections 137(a) and 171(a) and (b) prohibit a creditor from using an index within its control, for purposes of a variable-rate HELOC or a credit card account under an open-end consumer credit plan that is not home-secured (credit card account). 15 U.S.C. 1647(a), 1666i–1(a), (b). TILA Section 137(a) provides that, for variable-rate HELOCs, the index or other rate of interest to

[37] For a discussion of the proposed revisions to the content and format of ARM program disclosures, *see* 74 FR 43232, 43262–43269, Aug. 26, 2009.

which changes in the APR are related must be "based on an index or rate of interest which is publicly available and is not under the control of the creditor." 15 U.S.C. 1637(a). Section 226.5b(f)(1) implements TILA Section 137(a). TILA Section 171(a) provides that, for a credit card account, a card issuer may not increase any APR, rate, fee, or finance charge applicable to any outstanding balance, except as permitted under TILA Section 171(b). 15 U.S.C. 1666i–1(a). TILA Section 171(b)(2) provides an exception for an increase in a variable APR in accordance with a credit card agreement that provides for changes in the rate according to the operation of an index that is *not* under the control of the creditor and is available to the general public. 15 U.S.C. 1666i–1(b)(2). Section 226.55(b)(2) implements TILA Section 171(b)(2).

The Board believes that use of an index within a creditor's control, such as a creditor's own cost of funds, for closed-end mortgages has not been common in recent years but does occur. Although TILA does not prohibit using an index within a creditor's control, federally chartered banks and thrifts may be subject to rules that prohibit using such an index. OCC regulations generally require that an ARM index used by a national bank be "readily available to, and verifiable by, the borrower and beyond the control of the bank." 12 CFR 34.22(a). Similarly, OTS regulations generally provide that any index a Federal savings association uses for ARMs must be "readily available and independently verifiable" and must be "a national or regional index." 12 CFR 560(d)(1). An exception applies if a national bank or Federal savings association notifies the OCC or the OTS, respectively, of its use of an index that does not meet the applicable standard and the OCC or OTS does not notify the institution that such use presents supervisory concerns or raises significant issues of law or policy. 12 CFR 34.22(b); 12 CFR 560.35(d)(3). If the OCC or the OTS notifies an institution of such concerns or issues, the institution may not use the index without prior written approval. *Id.*

The Board solicits comment on whether Regulation Z should prohibit the use of an index under a creditor's control for a closed-end ARM and require the use of a publicly available index. What, if any, are the potential benefits to consumers of using an index within a creditor's control, such as a creditor's own cost of funds, for closed-end ARMs? What are the risks to consumers of using such an index? Are interest rates higher or more volatile when creditors base ARMs' interest rates on their own internal index rather than on an index not under their control and available to the general public? Is the use of an index within a creditor's control more common with certain types of creditors (for example, community banks), in certain regions of the country, or for certain types of closed-end ARMs and if so, why?

Reverse Mortgages

Under the August 2009 Closed-End Proposal, the Board proposed to expand the coverage of § 226.19(b). Currently, § 226.19(b) applies to a closed-end credit transaction secured by the consumer's principal dwelling with a term greater than one year, if the APR may increase after consummation. Under the August 2009 Closed-End Proposal, § 226.19(b) generally would apply to a closed-end credit transaction if the APR may increase and the transaction is secured by real property or a consumer's dwelling.[38] *See* proposed §§ 226.19(b) and 226.38(a)(3), 74 FR 43232, 43327, 43333, Aug. 26, 2009.

Comment 19(b)–1 currently clarifies the coverage of § 226.19(b) and discusses particular transaction types. Under the August 2009 Closed-End Proposal, comment 19(b)–1 would be revised consistent with the proposed expansion of the coverage of § 226.19(b). The Board now is proposing, however, to except reverse mortgages from the requirement to provide ARM program disclosures, as discussed below in the section-by-section analysis of proposed §§ 226.19(e) and 226.33(b). The Board therefore now proposes a conforming amendment to comment 19(b)–1 to state that § 226.19(b) does not apply to reverse mortgages subject to § 226.33(a). For ease of reference, this proposal republishes the previously proposed revisions to proposed comment 19(b)–1.[39] The Board requests that interested parties limit the scope of their comments to the newly proposed change to comment 19(b)–1.

19(e) Exception for Reverse Mortgages

Section 226.19(b) currently requires creditors to provide detailed disclosures about adjustable-rate loan programs and a booklet entitled *Consumer Handbook on Adjustable Rate* Mortgages (CHARM booklet) if a consumer expresses an interest in ARMs. Section 226.19(b) applies to closed-end transactions secured by a consumer's principal dwelling with a term greater than one year. Under the August 2009 Closed-End Proposal, the Board proposed to revise the information required under § 226.19(b) for ARM program disclosures and to remove the requirement to provide the CHARM booklet.[40] The Board also proposed to add a new § 226.19(c) requiring creditors to provide two proposed publications, "Key Questions to Ask About Your Mortgage" and "Fixed vs. Adjustable Rate Mortgages," whether or not a consumer expresses an interest in ARMs. Previously proposed § 226.19(d) provides timing requirements for the disclosures required by § 226.19(c) and (d). For reverse mortgages, the Board is proposing to require creditors to provide a separate "Key Questions about Reverse Mortgage Loans" publication. The Board therefore proposes to except reverse mortgages from the requirements of § 226.19(b) through (d).

Section 226.20 Subsequent Disclosure Requirements

20(a) Refinancings: Modifications to Terms by the Same Creditor

Background

For closed-end credit transactions, existing § 226.20(a) applies to "refinancings" undertaken by the original creditor or the current holder or servicer of the original obligation. Section 226.20(a) provides that a refinancing by the original creditor or the current holder or servicer of the original obligation is a new transaction requiring the creditor to provide new TILA disclosures to the consumer. A refinancing by any other person is, in all cases, a new transaction under Regulation Z subject to a new set of disclosures, and is not governed by the provisions in § 226.20(a). For all refinancings, the prohibitions in § 226.35 apply if the new transaction is a higher-priced mortgage loan, as defined in § 226.35(a). *See* comments 20(a)–2, –5.

Under § 226.20(a), a refinancing is generally deemed to occur when an existing obligation is satisfied and replaced by a new obligation involving the same parties, "based on the parties' contract and applicable law." *See* comment 20(a)–1. Any change to an agreement by the same parties that does not result in satisfaction and replacement of the existing obligation—

[38] For a discussion of previously proposed exclusions from coverage by proposed § 226.19(b), see proposed comment 19(b)–3, 74 FR 43232, 43397, Aug. 26, 2009.

[39] No changes are proposed to previously proposed § 226.19(b) or to previously proposed commentary, other than the coverage commentary under proposed comment 19(b)–1. Therefore, only the revisions previously proposed to comment 19(b)–1 are republished.

[40] For a discussion of the proposed revisions to the content and format of ARM program disclosures, see 74 FR 43232, 43258–43262, Aug. 26, 2009.

for example, a change in the loan's maturity date—does not require new disclosures under § 226.20(a), with two exceptions: (1) An increase in a variable rate not previously disclosed; or (2) conversion from a fixed rate to a variable rate. *See* comment 20(a)–3. These two modifications to terms are always considered "refinancings" under Regulation Z, even if the existing obligation is not satisfied and replaced.

On the other hand, the following modifications to terms are *not* treated as new transactions for purposes of Regulation Z, even if "satisfaction and replacement" has occurred: (1) Single payment renewals with no changes in original terms; (2) APR reductions with a corresponding change in payment schedule; (3) judicial proceeding workouts; (4) workouts for delinquent or defaulting consumers, unless the APR increases or new money is advanced; or (5) renewal of optional insurance if disclosures were previously provided. *See* § 226.20(a)(1)–(5).

The Board originally defined the term "refinancing" and established it as an event requiring new disclosures to address the practice of "flipping," in which a loan involving pre-computed financed charges was prepaid and replaced with a new obligation between the same parties. *See* 34 FR 2009, Feb. 11, 1969. The Board believed that disclosures for these refinancings would arm consumers with information regarding the impact of "flipping" on their credit terms. Under the 1969 definition of "refinancing," almost any post-consummation modification to terms created a "new credit transaction" that required new TILA disclosures, with few clear exceptions. This standard proved complex and resulted in many requests for interpretation and guidance. In response, the Board issued several interpretive letters to clarify, for example, that judicial workouts were exempt, but not workouts for delinquent or defaulting consumers.

In 1980, the Board re-examined the definition of refinancing in connection with implementing the TILA Simplification Act. The Board initially proposed a broad definition that depended largely on the mutual intent of both parties to the agreement. *See* 45 FR 29726, 29749, May 5, 1980. Many commenters, mostly from industry, asserted that the definition was too broad, vague, and difficult to apply. 45 FR 80648, 80685, Dec. 5, 1980. The Board issued a second proposal in December 1980, ultimately adopted in 1981, setting forth the current definition: "A refinancing occurs when an existing obligation that was subject to this subpart is satisfied and replaced by a new obligation undertaken by the same consumer." § 226.20(a). The Board believed that this definition would provide a more precise standard that aligned with industry use of the term, and would cover modifications to terms that are similar to new credit transactions. 46 FR 20882, 20903, Apr. 7, 1981.

Concerns With the Current Definition of "Refinancing"

Since 1981, creditors have frequently requested guidance on the types of modifications to an existing obligation that constitute a refinancing under existing § 226.20(a). As discussed above, whether a refinancing occurs under Regulation Z depends on whether the existing obligation is satisfied and replaced under applicable State law. However, court decisions on satisfaction and replacement are inconsistent. State courts take a case-by-case approach to ascertain the parties' intent before deciding whether an existing note was satisfied and replaced by a new note (*i.e.,* novation).[41] Many cases focus on determining lien priorities and the equitable interests of sureties or guarantors, not on protecting the interests of consumers.[42]

Reliance on State law to determine whether a refinancing occurs under Regulation Z has led to inconsistent application of TILA and Regulation Z and, in some cases, opportunities to circumvent disclosure requirements. Compliance and enforcement are also difficult, as creditors and examiners must monitor and interpret State case law. In some states, promissory notes routinely include a statement that the parties do not intend to extinguish (*i.e.,* satisfy and replace) the existing obligation. As a result, transactions involving the same creditor are rarely considered refinancings in those states, even when the creditor makes significant modifications to the terms of the existing obligation. To avoid long-term interest rate risk, some creditors that hold loans in portfolio will structure mortgage transactions as short-term balloon loans, which they modify shortly before the balloon comes due on the note. The modification may include an increase in the consumer's interest rate, but may not be a refinancing under current Regulation Z. Some creditors may provide TILA disclosures in these circumstances, but they need not do so, and the protections in § 226.35 for higher-priced mortgage loans do not apply. *See* 73 FR 44522, 44594, July 30, 2008.

In addition, in certain states, a refinancing may be structured as a modification to avoid State taxes on the refinancing.[43] The modifications to the consumer's existing obligation can be significant, and may even involve substitution of a new creditor for the existing creditor through assignment of the note before the modification occurs. Under some states' laws, however, satisfaction and replacement has not occurred. These arrangements may help the consumer avoid paying taxes associated with a refinancing in certain states, but consumers are not entitled to new TILA disclosures to help them fully understand the costs of the new transaction, and may not have a right to rescind under § 226.23 or the protections in § 226.35 if the modified loan is a higher-priced mortgage loan.

The Board's Proposal

The Board is proposing a new standard for determining when new disclosures are required. Under the proposal, new disclosures would be required for mortgage transactions when the existing parties agree to modify certain key terms, such as the interest rate or loan amount. The proposal would replace the existing standard of "satisfaction and replacement," which requires an assessment of whether the existing legal obligation is satisfied and replaced under applicable State law. Instead, under the proposal, when existing parties to a mortgage transaction agree to modify certain terms, the creditor would have to give the consumer a complete new set of TILA disclosures. At the same time, the proposal would expressly provide that changing certain other terms does not require new disclosures, even if the existing obligation is satisfied and replaced. For non-mortgage transactions, Regulation Z continues to rely upon satisfaction and replacement to determine whether a "refinancing" of the existing obligation between the same

[41] *Compare Temores* v. *Overland Bond and Investment Corp.,* 1999 U.S. Dist. LEXIS 11878 (N.D. Ill. 1999) (finding that a change in payment schedule resulted in "satisfaction and replacement," and therefore, was a "refinancing"), *with Hanson* v. *Central Savings Bk.,* 2007 Mich. App. LEXIS 920 (Ct. App. MI 2007) (holding that a consolidation of several notes, one of which was not originally secured by the mortgage, was not a "refinancing" but a renewal).

[42] *See Citizens & Southern Nat'l Bank* v. *Scheider,* 228 S.E.2d 611 (Ga. App. 1976) (involving the liability of a guarantor); *see also Metro Hampton Co.* v. *Dietrich et al.,* 1999 Mich. App. LEXIS 2274 (Ct. App. MI 1999) (involving the liabilities of guarantors).

[43] For example, New York's mortgage recording tax rates are comparatively high. Consolidations, extensions, and modifications are typically used to allow consumers to avoid this tax; consumers thus pay taxes only to the extent the refinancing exceeds the amount of the original mortgage.

parties is a new transaction that requires new disclosures.

Specifically, proposed § 226.20(a)(1)(i) provides that a new transaction results, and new disclosures are required, when the same creditor and same consumer modify an existing obligation by: (1) Increasing the loan amount; (2) imposing a fee on the consumer in connection with the agreement to modify an existing legal obligation, regardless of whether the fee is reflected in an agreement between the parties; (3) changing the loan term; (4) changing the interest rate; (5) increasing the periodic payment amount; (6) adding an adjustable-rate feature or other risk factor identified in proposed § 226.38(d)(1)(iii) or 226.38(d)(2), such as a prepayment penalty or negative amortization; or (7) adding new collateral that is a dwelling or real property.

Proposed § 226.20(a)(1)(ii) provides three exceptions to the general definition of a new transaction: (1) Modifications that occur as part of a court proceeding; (2) modifications that occur in connection with the consumer's default or delinquency, unless the loan amount or interest rate is increased, or a fee is imposed on the consumer in connection with the modification; and (3) modifications that decrease the interest rate with no additional modifications to terms other than a decrease in the periodic payment amount, an extension of the loan term, or both, and where no fee is imposed on the consumer.

Proposed § 226.20(a)(1)(iii) defines the term "same creditor" for purposes of proposed § 226.20(a)(1). These proposed provisions are explained in further detail below.

Benefits of the proposal. The proposal is intended to bring uniformity to creditors' practices, to facilitate compliance, and to ensure that consumers receive disclosures in all cases in which the loan terms change significantly, risky features are added, or fees are imposed in connection with a modification. In addition, if the transaction is a higher-priced mortgage loan, the proposal ensures that the consumer will receive the protections in § 226.35, including the requirement that the creditor assess the consumer's ability to repay the loan. Proposed § 226.20(a)(1) is intended to ensure more consistent application of TILA and Regulation Z and to diminish possible circumvention of the disclosure requirements. Moreover, the proposal should facilitate compliance and enforcement because creditors and examiners would no longer need to monitor and apply State case law to each transaction to determine whether the transaction requires new disclosures.

The Board believes that when the same parties to an existing closed-end mortgage transaction agree to modify key terms, the modification is the functional equivalent of a "refinancing," and therefore, should be treated as a new credit transaction under TILA and Regulation Z. To further TILA's purpose of promoting the informed use of credit, this proposal requires that, in defined circumstances, consumers receive new TILA disclosures to help them decide whether to proceed with a modification or to shop and compare other available credit options.

In particular, the proposed rule would ensure that consumers receive important information about modifications to key terms of their existing mortgage obligation, such as taking on new debt, a change in the interest rate, or the addition of a risky feature (*e.g.,* a prepayment penalty), and the costs assessed by creditors to modify these terms. These modifications would also be highlighted in the revised TILA disclosures that the Board published for comment in August 2009. *See* 74 FR 43232, Aug. 26, 2009. Thus, the revised disclosures assure a meaningful disclosure of credit terms to apprise consumers of the impact that modifications have on their existing credit terms and the costs of the transaction, and to enable them to compare the modified terms to other credit options.

The Board believes that removing the standard of "satisfaction and replacement" to determine whether a modification results in a "new credit transaction" under TILA and Regulation Z will facilitate compliance and diminish creditors' ability to circumvent TILA and Regulation Z requirements. The proposed rule, however, would not limit states' ability to set their own standards for determining when recording taxes are required or for ordering lien priorities.

Impact of proposal on existing mortgage market. The Board recognizes that proposed § 226.20(a)(1) is comprehensive and would increase the number of transactions requiring new disclosures.[44] Most changes in terms that are now only "modifications" would be new transactions. For example, the Board estimates in those states where refinancings are commonly structured as modifications or consolidations to avoid State mortgage recording taxes, such as New York and Texas, the number of transactions requiring new TILA disclosures could potentially double.[45] The Board does not believe, however, that consumers located in these states would be unable to refinance their mortgages simply because creditors would be required to provide TILA disclosures under the proposal. The Board recognizes that requiring new TILA disclosures in these cases would increase costs to creditors, and that these costs would be passed on to consumers. However, outreach conducted by the Board for this proposal revealed that some large creditors in these states currently provide consumers with TILA disclosures, regardless of whether the transaction is classified as a "refinancing" for purposes of § 226.20(a). In this regard, the proposal appears to align with current industry practice. In addition, the Board emphasizes that the proposal is not intended to affect applicable State law as it relates to the note and mortgage, or other matters. For example, the proposal would not limit states' ability to impose standards for determining when recording taxes are required or the ordering of lien priorities.

The Board also recognizes that some creditors might decline to make some modifications that are beneficial for consumers because of the burden of giving new TILA disclosures and the potential exposure to TILA remedies for errors, including rescission. The proposal seeks to address this issue by providing several clear exceptions. For example, agreements made in connection with consumers' delinquency or default on existing obligations do not require new disclosures, unless the loan amount or interest rate increases, or a fee is imposed on the consumer in connection with the agreement. This exception is intended to ensure that creditors are not discouraged from offering workouts to consumers at risk of losing their homes and who likely do not have other credit

[44] The Board estimates that the number of refinancings that occur annually with the same creditor, and which would be impacted by this proposal, represents approximately 26% of all loans made in the mortgage market. This figure was calculated by taking a sample of refinancing transactions that occurred between 2003 and 2008 from the database of one of the three national consumer reporting agencies, and identifying those transactions that used the same mortgage subscriber code.

[45] This figure was determined by comparing the share of reported refinancing activity (obtained from credit record data reported under HMDA for 2008) of counties located within New York and Texas to counties directly bordering those states. The number of refinancings reported in 2008 for New York was 95,434, and for Texas, 141,733. Under the proposal, the number of refinancings reported could increase up to 190,868 and 283,466, for New York and Texas, respectively.

options. In addition, the proposal provides exceptions for judicial proceeding workouts, and for decreases in the interest rate that lower the periodic payment amount or lengthen the loan term but do not involve an additional fee. The Board notes that the utility of some of these exceptions is limited by the requirement that the creditor not impose a fee on the consumer in connection with the agreement to modify the existing obligation. The Board is seeking comment on the scope of the fee restriction. *See* section-by-section analysis of proposed § 226.20(a)(1)(i)(B) discussing fees, and § 226.20(a)(1)(ii), discussing exceptions.

Moreover, under the proposal, some modifications to the terms of an existing legal obligation would not be new transactions under TILA and Regulation Z, even if State law treats the existing obligation as being satisfied and replaced. For example, a change in the payment schedule that permits the consumer to make bi-weekly rather than monthly payments would not require new TILA disclosures if no other modification identified under the proposed definition of new transaction occurred, even if applicable State law treats the modification as a new transaction.

Certain informal arrangements by the same parties also remain outside the scope of the proposed definition of new transaction for mortgages. Generally, a change to the terms of the legal obligation between the parties requires new disclosures. *See* § 226.17(c)(1) and corresponding commentary. The "legal obligation" is determined by applicable State law or other law, and is normally presumed to be contained in the note or contract that evidences the agreement. *See* comment 17(c)(1)–2. Thus, if an arrangement between the same parties does not rise to the level of a change to the terms of the legal obligation under applicable State law (*i.e.,* a change as evidenced in the note or contract, or by separate agreement), then new disclosures would not be required under proposed § 226.20(a)(1)(i). However, in all cases where a fee is imposed on the consumer in connection with the arrangement, a new transaction requiring new disclosures occurs under proposed § 226.20(a)(1)(i), regardless of whether the fee is reflected in any agreement between the parties. See proposed § 226.20(a)(1)(i)(B) regarding fees. For example, new disclosures would not be required if a creditor informally permits the consumer to defer payments owed on an obligation from time to time, for instance to account for holiday seasons. Under the same example, however, if a creditor imposes a fee on the consumer in connection with the arrangement, a new transaction requiring new disclosures would result under proposed § 226.20(a)(1)(i), regardless of whether the fee is reflected in any agreement between the parties.

As discussed more fully below, the scope of proposed § 226.20(a)(1)(i) is comprehensive and would increase the number of modifications that would result in new transactions subject to the right of rescission. The Board solicits comment on whether the features identified under proposed § 226.20(a)(1)(i)(A)–(G) that would trigger new disclosures, and other applicable requirements under TILA and Regulation Z, such as rescission, are appropriate, including comment on whether the scope of the rule should be narrower or broader.

Authority. The Board is proposing to revise when modifications to terms of an existing legal obligation result in a new credit transaction that requires new TILA disclosures pursuant to its authority under TILA Section 105(a). 15 U.S.C. 1604(a). TILA Section 105(a) authorizes the Board to prescribe regulations and make adjustments or exceptions necessary or proper to carry out TILA's purposes, which include informing consumers about their credit terms and helping them shop for credit, to prevent circumvention or evasion, or to facilitate compliance. TILA Section 102; 15 U.S.C. 1601(a), 1604(a).

Scope of proposed § 226.20(a)(1). Proposed § 226.20(a)(1) applies only to closed-end mortgage transactions secured by real property or dwellings, including vacant land and construction loans. Covering these transactions would be consistent with the Board's August 2009 Closed-End Proposal to improve disclosure requirements and provide other substantive consumer protections for closed-end mortgages secured by real property or a dwelling. *See* 74 FR 43232, Aug. 26, 2009; 73 FR 44522, July 30, 2008.

The Board is not aware of concerns with the existing "refinancing" definition as it relates to non-mortgage transactions. Thus, for closed-end non-mortgage transactions, current § 226.20(a) would be redesignated as § 226.20(a)(2) and would continue to provide that a "refinancing" is a new transaction that occurs upon "satisfaction and replacement," as discussed in further detail below. The Board will determine whether proposed § 226.20(a)(1) should also extend to non-mortgage credit in the next phase of the Board's Regulation Z review.

Definitions for proposed § 226.20(a)(1). Existing § 226.20(a) provides that the "same creditor" is the original creditor, holder or servicer. *See* comment 20(a)–5. Proposed § 226.20(a)(1)(iii) defines "same creditor" as the current holder of the original obligation or the servicer acting on behalf of the current holder.

Proposed section 226.20(a)(1) applies to creditors. Under TILA Section 103(f), a person is a "creditor" when it extends consumer credit and is the person to whom the debt is originally payable (*i.e.,* the original creditor). 15 U.S.C. 1602(f); § 226.2(a)(17). "Credit" is defined as "the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment." TILA Section 103(e); 15 U.S.C. 1602(e); § 226.2(a)(14). The Board believes that any person who makes significant changes to the terms of an existing legal obligation, such as the interest rate or the loan amount, engages in extending credit to the consumer by continuing the extension of debt on different terms and, therefore, is a "creditor" under TILA. Thus, pursuant to its authority under Section 105(a), the Board proposes under § 226.20(a)(1) to treat the current holder or servicer as a creditor when it modifies key terms to the existing obligation, whether the current holder is the original creditor, an assignee or the servicer. 15 U.S.C. 1604(a). For a discussion of differences between this proposal and the Secure and Fair Enforcement for Mortgage Licensing Act (the SAFE Act),[46] see "Impact of Proposed § 226.20(a)(1) on Other Rules," below.

20(a)(1)(i)

Modifications to Terms—Mortgages

Proposed § 226.20(a)(1)(i) provides that, for an existing closed-end mortgage loan secured by real property or a dwelling subject to TILA and Regulation Z, a new transaction requiring new disclosures occurs when the same creditor and same consumer agree to modify the terms of an existing obligation by: (1) Increasing the loan amount; (2) imposing a fee on the consumer in connection with the modification of an existing legal obligation, regardless of whether the fee is reflected in any agreement between the parties; (3) changing the loan term; (4) changing the interest rate; (5) increasing the periodic payment amount; (6) adding an adjustable-rate feature or other risk factor identified in

[46] The SAFE Act is contained in Sections 1501 through 1517 of the Housing and Economic Recovery Act of 2008, Pub. L. 110–289 (July 30, 2008), *codified at* 12 U.S.C. 5101–5116.

proposed § 226.38(d)(1)(iii) or 226.38(d)(2); or (7) adding new collateral that is a dwelling or real property. Each of these modifications to terms is discussed below.

Proposed comment 20(a)(1)(i)–1 provides guidance about the scope of § 226.20(a)(1). Proposed § 226.20(a)(1) applies only to certain modifications to an existing legal obligation that are made by the same creditor (*i.e.,* the current holder or the servicer acting on behalf of the current holder). This comment also clarifies that all other creditors are not subject to § 226.20(a)(1), but must provide TILA disclosures when entering into an agreement to extend credit covered by TILA, and are subject to all other applicable provisions of TILA and Regulation Z.

Proposed comment 20(a)(1)(i)–2 provides that when the same creditor and same consumer modify a term or add a condition that is *not* identified under proposed § 226.20(a)(1)(i), such a modification is *not* a new transaction and therefore, new TILA disclosures are not required. Proposed comment 20(a)(1)(i)–2 provides as an example, a rescheduling of payments under an existing obligation from monthly to bi-weekly with no other modifications to the terms listed under § 226.20(a)(1)(i)(A)–(G).

Proposed comment 20(a)(1)(i)–2 also provides that § 226.20(a)(1) applies only if the modification to terms rises to the level of a change to the terms of an existing legal obligation, as defined under applicable State law, unless a fee is imposed on the consumer. Generally, a change to the terms of the legal obligation between the parties requires new disclosures. *See* § 226.17(c)(1) and corresponding commentary. The "legal obligation" is determined by applicable State law or other law, and is normally presumed to be contained in the note or contract that evidences the agreement. *See* comment 17(c)(1)–2. If the modification does not rise to the level of a change to the terms of the legal obligation under applicable State law, then new disclosures would not be required under proposed § 226.20(a)(1)(i), unless a fee is imposed. However, in all cases where a fee is imposed on the consumer in connection with the modification, a new transaction requiring new disclosures occurs, regardless of whether the fee is reflected in any agreement between the parties. *See* proposed § 226.20(a)(1)(i)(B). Proposed comment 20(a)(1)(i)–2 provides several examples of informal arrangements that would not be new transactions under proposed § 226.20(a)(1).

Proposed comment 20(a)(1)(i)–3 clarifies that a new transaction requires the creditor to provide the consumer with a complete set of new disclosures and also to comply with other applicable provisions of Regulation Z, such as the protections in § 226.35 for higher-priced mortgage loans and the notice of rescission in § 226.23(b). Proposed comment 20(a)(1)(i)–3 provides several examples of when other applicable provisions of Regulation Z, such as the rescission notice requirements under proposed § 226.23(b), may apply.

For mortgage transactions subject to TILA and Regulation Z, applicable disclosures must be provided in accordance with specific timing requirements. For example, under proposed § 226.19(a), creditors must mail or deliver an early disclosure of credit terms to the consumer within three business days after the creditor receives an application and at least seven business days before consummation, and before a fee is imposed on the consumer other than a fee for obtaining the consumer's credit history. Proposed comment 20(a)(1)(i)–4 provides guidance to creditors on when a written application is received for a new transaction for purposes of meeting the timing requirements for disclosures under TILA and Regulation Z. Proposed comment 20(a)(1)(i)–4 cross references existing comment 19(a)(1)(i)–3 (due to technical revisions, now proposed comment 19(a)(1)(i)–2), which states that creditors may rely on RESPA and Regulation X in deciding when a "written application" is received, regardless of whether the transaction is subject to RESPA.

The Board is aware that consumers may not always formally apply for a modification of the terms of an existing obligation. In many cases, the creditor may have in its possession the information in the definition of "application" under RESPA and Regulation X (*e.g.,* the consumer's name, monthly income, or property address). *See* 12 CFR 3500.2(b). Therefore, proposed comment 20(a)(1)(i)–4 also provides that an application is deemed received in those instances where the creditor has the information necessary to constitute an "application" as defined under RESPA and Regulation X, whether the creditor requests the information from the consumer anew or uses information on file.

Proposed comment 20(a)(1)(i)–5 clarifies that if, before the time period provided for the early disclosure requirement expires, the creditor decides it will not or cannot make the modification requested or the consumer withdraws the application, then the creditor need not make the early disclosure of credit terms required by § 226.19(a)(1)(i). This proposed comment also cross references ECOA and Regulation B regarding adverse action notice requirements, which may apply. See 12 CFR 202.9(a).

Increase in the loan amount. Proposed § 226.20(a)(1)(i)(A) provides that a new transaction occurs when the loan amount is increased. "Loan amount" is defined under proposed § 226.38(a)(1) as "the principal amount the consumer will borrow as reflected in the loan contract," and would be required to be disclosed on the revised mortgage disclosures published in the Board's August 2009 Closed-End Proposal. *See* 74 FR 43292, Aug. 26, 2009. An increase in the loan amount represents new debt secured by the consumer's real estate or dwelling. Thus, an increase in the loan amount presents risk to the consumer and merits new disclosures and the protections afforded by Regulation Z.

Under proposed § 226.20(a)(1)(i)(A), the new loan amount would include any cost of the transaction that is financed, but exclude amounts attributable to capitalization of arrearages and funds advanced for existing or newly established escrow accounts. Proposed comment 20(a)(1)(i)(A)–1 clarifies that an increase in the loan amount occurs for purposes of § 226.20(a)(1) when the new loan amount exceeds the unpaid principal balance plus any earned unpaid finance charge or earned unpaid non-finance charge (*e.g.,* a late fee) on the existing obligation. Under the proposal, even if a fee is not part of the new loan amount, it would nevertheless result in a new transaction that requires new disclosures. For example, if a creditor imposes an application or modification fee on the consumer in connection with the agreement to modify terms of an existing obligation, and the consumer pays that fee directly in cash, a new transaction requiring new disclosures would occur. See proposed § 226.20(a)(1)(i)(B) for further discussion of fees imposed on the consumer in connection with the agreement, resulting in a new transaction requiring new disclosures.

Proposed comment 20(a)(1)(i)(A)–2 provides that an increase in the loan amount includes any costs of the transaction, such as points, attorney's fees, or title examination and insurance fees that are financed by the consumer, and provides an example of a transaction where the loan amount is increased because fees are paid from loan proceeds.

Proposed comment 20(a)(1)(i)(A)–3 clarifies that amounts that are advanced to the consumer to fund either an existing escrow account, or a newly established escrow account, are not considered in determining whether an increase in loan amount has occurred under proposed § 226.20(a)(1). RESPA limits the amount creditors may collect for escrows, and therefore, it is unlikely that large advances will be financed into the loan amount to establish or fund an escrow account. *See* 24 CFR 3500.17(c)(1)–(9), (f), and (g). In addition, the Board believes that a creditor is unlikely to establish an escrow account without first notifying the consumer. Thus, the Board believes that any benefit of new TILA disclosures in these instances is outweighed by the burden imposed on creditors.

The Board solicits comment on whether to provide that a *de minimis* increase in the loan amount owed on the existing legal obligation would not trigger a requirement to give new disclosures. If the Board chose to establish a *de minimus* increase, should the increase be stated in terms of a dollar amount, a percentage of the loan, or both? What increase in the loan amount should be considered *de minimus*?

Fees imposed on the consumer. Proposed § 226.20(a)(1)(i)(B) provides that a new transaction occurs when a creditor imposes a fee on the consumer in connection with a modification. The Board believes that including the imposition of fees as an action that results in a new transaction is appropriate to ensure that consumers receive important information about the terms and fees relating to the transaction. On the revised mortgage disclosures published in the Board's August 2009 Closed-End Proposal, costs of the transaction would be disclosed as "total settlement charges," together with required statements regarding the amount of charges included in the loan amount. *See* 74 FR 43292, Aug. 26, 2009. Thus, providing new TILA disclosures when consumers must pay a fee in connection with modifying a term of the existing obligation would ensure that consumers are aware of and review cost information associated with the modification. In this way, consumers would have a meaningful opportunity to shop and compare other available credit options.

Proposed comment 20(a)(1)(i)(B)–1 clarifies that a fee imposed on the consumer in connection with a modification of an existing legal obligation need not be part of a contractual arrangement between the parties to result in a new transaction under § 226.20(a)(1)(i)(B). For example, a creditor may impose an application fee on the consumer, but not reference that fee in the existing agreement or the agreement to modify the terms of an existing obligation. Under the proposal, imposing an application fee would result in a new transaction requiring new disclosures.

Proposed comment 20(a)(1)(i)(B)–2 provides guidance that fees imposed on the consumer in connection with the agreement include any fee that the consumer pays out-of-pocket or from loan proceeds. Proposed comment 20(a)(1)(i)(B)–2 also provides examples of fees under § 226.20(a)(1)(i)(B), such as points, underwriting fees, and new insurance premiums. The commentary further clarifies that charging insurance premiums to continue insurance coverage does not constitute imposing a fee on the consumer under proposed § 226.20(a)(1)(i)(B). For example, where a creditor charges premiums for the continuation of insurance coverage, but does not increase the premiums for existing hazard insurance or require increased property insurance amounts, such costs are not considered fees imposed on the consumer in connection with the agreement. Proposed comment 20(a)(1)(i)(B)–3 states that creditors may rely on proposed comment 19(a)(1)(i)–2 to determine when an application is received for a new transaction subject to proposed § 226.20(a)(1).

The Board recognizes that including any fee imposed on the consumer in connection with the modification as an event triggering disclosures will likely result in a significant number of modifications being deemed "new credit transactions" under TILA. The Board solicits comment on the proposed scope of § 226.20(a)(1)(i)(B) regarding fees. Specifically, the Board seeks comment on whether fees imposed on consumers in connection with a modification should include all costs of the transaction or, for example, only those fees that are retained by creditors or their affiliates. Should the rule further provide that § 226.20(a)(1)(i)(B) does not cover those instances where only a *de minimis* fee is retained by the creditor? What fee amount should be considered *de minimis*? And, should a *de minimis* fee be stated in terms of a dollar amount, a percentage of the loan, or both?

As discussed in greater detail below, the Board proposes several exceptions to the general definition of "new transaction." For example, agreements entered into in connection with the consumer's delinquency or default on the existing obligation, or modifications that decrease the rate are generally not "new transactions" under the proposal. See proposed § 226.20(a)(1)(ii)(B) and (C) discussing these exceptions. However, these exceptions are unavailable if a creditor imposes a fee on the consumer in connection with the agreement to modify the existing legal obligation. The Board is aware that when creditors modify existing obligations in these instances, reasonable fees may be necessary to underwrite and process the loan modification, and that requiring creditors to give a full set of new disclosures for imposing these fees may discourage creditors from offering beneficial arrangements to consumers. Thus, the Board solicits comment on whether an exception should be made for reasonable fees imposed in connection with these modifications. What types of fees, if any, are necessary for these modifications and thus should be permitted under these exceptions, and in what amounts? Are commenters aware of abuses concerning these types of fees, suggesting that they should not be permitted? Should the amount of any fee permitted under these exceptions be stated in terms of a dollar amount, a percentage of the loan, or both? The Board also seeks comment on whether adopting two separate approaches regarding fees unnecessarily complicates the regulatory scheme under TILA and Regulation Z, and whether creditors would take advantage of any exception provided for fees.

Change in the loan term. Under proposed § 226.20(a)(1)(i)(C), a new transaction occurs when the creditor modifies the loan term of the existing obligation. That is, a new transaction requiring new disclosures would occur where the maturity date of the new transaction will occur earlier or later than the maturity date of the existing legal obligation. The loan term is a key piece of information that consumers should be aware of when evaluating a loan offer, as shown by the Board's consumer testing, and would be disclosed on the revised mortgage disclosures published in the Board's August 2009 Closed-End Proposal. *See* 74 FR 43292, 43299 Aug. 26, 2009. Changing the amortization period of a loan can significantly impact the total interest that a consumer must pay over the life of the mortgage. Thus, the Board believes that consumers should receive new TILA disclosures to compare the total cost (expressed as the APR) associated with modifying the existing obligation over an extended or shortened period of time.

Proposed comment 20(a)(1)(i)(C)–1 clarifies that a change in the loan term occurs when the maturity date of the new transaction is earlier or later than the maturity date of the existing obligation, and provides an example of a change in the loan term that would result in a new transaction. Proposed comment 20(a)(1)(i)(C)–1 also cross references proposed § 226.38(a) for the meaning of "loan term."

Change in the interest rate. Proposed § 226.20(a)(1)(i)(D) provides that a new transaction occurs when the creditor changes the contractual interest rate of the existing obligation. The interest rate is one of the most important pieces of information provided to consumers, as shown by the Board's consumer testing, and would be required to be disclosed on the revised mortgage disclosures published in the Board's August 2009 Closed-End Proposal. *See* 74 FR 43239, 43299 Aug. 26, 2009. A change in the interest rate may increase or decrease the cost of the loan and periodic payment obligation. In either case, the Board believes that consumers may wish to explore other credit alternatives before agreeing to a rate change, and therefore should receive TILA disclosures before agreeing to the change.

Proposed comment 20(a)(1)(i)(D)–1 clarifies that, to determine whether an increase or decrease in rate occurs, the creditor should compare the interest rate of the new obligation (the fully-indexed rate for an ARM) to the interest rate for the existing obligation that is in effect within a reasonable period of time—for example, 30 calendar days. The comment also gives examples of when a change in rate does and does not occur. Proposed comment 20(a)(1)(i)(D)–2 clarifies that a rate change stemming from changes in the index, margin, or rate does not result in a new transaction under proposed § 226.20(a)(1) if these changes were disclosed as part of the existing obligation, and provides an example. Proposed comment 20(a)(1)(i)(D)–2 clarifies further that if the rate feature was not previously disclosed, a modification to the rate would be a new transaction requiring new disclosures under proposed § 226.20(a)(1)(i).

Increase in the periodic payment amount. Proposed § 226.20(a)(1)(i)(E) provides that a new transaction occurs when the same creditor increases the periodic payment amount owed on an existing legal obligation. Consumer testing consistently showed that consumers shop for and evaluate a mortgage based on the monthly or periodic payment, as well as the interest rate. *See* 74 FR 43239, 43299, Aug. 26, 2009. The monthly payment helps consumers to determine whether they can afford the loan, and, accordingly, must be highlighted on the proposed mortgage disclosures published in the Board's August 2009 Closed-End Proposal. In keeping with the Board's findings about the importance of the periodic payment amount to consumers, the Board believes that consumers should receive a new TILA disclosure before agreeing to an increase in their monthly or other periodic payment obligation.

The Board solicits comment on whether consumers would benefit from having new TILA disclosures not only for increases in the periodic payment amount, but also for decreases in the payment amount obligation, when no other terms listed in § 226.20(a)(1)(i)(A)–(G) are modified. In addition, the Board solicits comment on whether to allow for *de minimis* differences between the periodic payment amount of an existing obligation and a new transaction, so that new disclosures would not be required for nominal discrepancies between the periodic payment amounts owed. What situations would suggest that a *de minimis* threshold for differences in the periodic payment amount is needed? If the Board adopts a *de minimis* threshold for differences in the periodic payment amount owed, should the threshold be stated in terms of a dollar amount, a percentage of the pre-existing payment, or both? What differences in periodic payment amounts would be so nominal as to be *de minimus*?

Proposed comment 20(a)(1)(i)(E)–1 clarifies that an increase in periodic payment amount based on a payment change previously disclosed on an existing legal obligation is not a new transaction under proposed § 226.20(a)(1)(i), and provides an example. Proposed comment 20(a)(1)(i)(E)–1 also clarifies that if the payment adjustment was not previously disclosed, any change that increases the periodic payment amount would be a new transaction requiring new disclosures under proposed § 226.20(a)(1)(i).

Proposed comment 20(a)(1)(i)(E)–2 clarifies that amounts that are advanced to the consumer to fund either an existing escrow account, or a newly established escrow account, are not considered in determining whether an increase in the payment amount has occurred under proposed § 226.20(a)(1). For further discussion of the Board's rationale for this exception, see the section-by-section analysis to proposed § 226.20(a)(1)(A) ("Increase in the loan amount") above, explaining proposed comment 20(a)(1)(i)(A)–3.

Addition of a risk feature. Proposed § 226.20(a)(1)(i)(F) provides that a new transaction occurs when an adjustable-rate feature one more of the risk features listed in § 226.38(d)(1)(iii) or 226.38(d)(2) is added to the existing obligation, or is otherwise part of the new transaction, as follows: (1) A prepayment penalty; (2) interest-only payments; (3) negative amortization; (4) a balloon payment; (5) a demand feature; (6) no documentation or low documentation; and (7) shared equity or shared appreciation. These features would be required to be disclosed to consumers under the Board's August 2009 Closed-End Proposal, based on the Board's consumer testing. *See* 74 FR 43304, 43335, Aug. 26, 2009. The Board believes that these features can change the fundamental nature of a loan transaction and may significantly increase the cost of the loan or risk to the consumer. For example, some of these terms pose a significant risk of payment shock, such as negative amortization; others, such as shared equity or shared appreciation, entitle creditors to the consumer's future equity. Consequently, the Board believes that when one or more of these features is added to an existing obligation, the consumer should receive new TILA disclosures and, if applicable, the right to rescind and the special protections in § 226.35.

Proposed comment 20(a)(1)(i)(F)–1 clarifies that changing the underlying index or formula upon which the interest rate calculation is based constitutes adding an adjustable-rate feature (unless the change was previously disclosed, see proposed § 226.20(a)(1)(i)(D)) and, therefore, is a new transaction under proposed § 226.20(a)(1)(i)(F). Proposed comment 20(a)(1)(i)(F)–1 provides further guidance that a new transaction does not result where the original index or formula becomes unavailable and is substituted by an alternative index or formula with substantially similarly historical rate fluctuations, and that produces a rate similar to the rate that was in effect at the time the original index or formula became unavailable.

Proposed comment 20(a)(1)(i)(F)–2 clarifies that if a creditor adds a feature listed under proposed § 226.38(d)(1)(iii) or 226.38(d)(2), such as a prepayment penalty, balloon payment, or negative amortization, a new transaction requiring new TILA disclosures occurs.

Addition of new collateral. Proposed § 226.20(a)(1)(i)(G) provides that adding real property or a dwelling as collateral to secure the existing obligation results in a new transaction requiring new disclosures. This approach ensures that consumers are notified of modifications to key credit terms of an existing obligation when they pledge assets as significant as a dwelling or real estate.

20(a)(1)(ii)

Exceptions

Currently, § 226.20(a) provides that, for closed-end credit transactions, the following modifications to terms are not new transactions even if "satisfaction and replacement" occurs: (1) Single payment renewals with no changes in original terms; (2) APR reductions with a corresponding change in payment schedule; (3) judicial proceeding workouts; (4) workouts for delinquent or defaulting consumers, unless the APR increases or new money is advanced; and (5) renewal of optional insurance if disclosures were previously provided.

The Board is proposing under § 226.20(a)(1)(ii) to eliminate these provisions and to instead provide three exceptions to the general definition of a new transaction for closed-end mortgages. The three proposed exceptions are modifications that: (1) Occur as part of a court proceeding; (2) occur in connection with the consumer's default or delinquency, unless the loan amount or interest rate increases, or a fee is imposed on the consumer in connection with the agreement to modify the existing legal obligation; and (3) decrease the interest rate with no other modifications to the terms, except a decrease in the periodic payment amount, an extension of the loan term, or both, and no fee is imposed on the consumer. Each of these proposed exceptions is discussed below.

Judicial workouts. The Board proposes under § 226.20(a)(1)(ii)(A) that modifications to terms agreed to as part of a court proceeding are not new transactions. This proposed exception is consistent with the existing exception from the definition of a "refinancing" under § 226.20(a)(3). Consumers entering into these arrangements typically are in bankruptcy and attempting to avoid foreclosure, and consequently have few credit options. These workouts occur with judicial oversight and benefit from safeguards associated with court proceedings. Thus, the Board believes that in those circumstances, the benefit to consumers of receiving new TILA disclosures is relatively small, and is outweighed by the burden to creditors of providing new disclosures. Proposed comment 20(a)(1)(ii)(A)–1 is adopted without revision from existing comment 20(a)(3).

Workout agreements for consumers in delinquency or default. Existing § 226.20(a)(4) provides an exception for workouts for consumers in delinquency or default unless the rate is increased or additional credit is advanced to the consumer (*i.e.,* the new amount financed is greater than the unpaid balance plus earned finance charge and premiums for the continuation of certain insurance types). Under this existing exception, fees imposed on the consumer in connection with the agreement to modify an existing legal obligation, and which the consumer pays directly or finances from loan proceeds, are not considered to be additional credit advanced to the consumer.

Similarly, proposed § 226.20(a)(1)(ii)(B) provides that modifications to terms agreed to as part of a workout arrangement for consumers in delinquency or default are not new transactions, unless there is an increase in the loan amount or interest rate, or a fee is imposed on the consumer in connection with the agreement to modify the existing legal obligation. Consumers in delinquency or default are unlikely to have other credit options available to them. The Board believes that where creditors provide these consumers with certain changes to terms, such as a decrease in rate and payment, and the consumer does not take on new debt or pay any fee, the modification is beneficial. In these instances, the benefit to consumers of a TILA disclosure appears outweighed by the risk that creditors would be discouraged from extending beneficial modifications (in lieu of foreclosure) due to the burden of giving new TILA disclosures and the potential exposure to TILA remedies for errors, including rescission.

Proposed § 226.20(a)(1)(ii)(B) differs from the existing exception from the definition of a "refinancing" under § 226.20(a)(4) in two respects. First, the term "loan amount," rather than the term "amount financed," is used to determine whether the consumer is taking on new debt in connection with the modification. For further discussion of the loan amount, see proposed § 226.20(a)(1)(i)(A). Using the term "loan amount" simplifies determining whether new debt is involved, but does not create a substantive change in the exception.

Second, the proposed exception under § 226.20(a)(1)(ii)(B) is unavailable to creditors if any fee is imposed on the consumer in connection with the agreement to modify the existing legal obligation. Anecdotal evidence suggests that excessive or abusive fees may be imposed as part of loan modifications or other workouts offered to consumers in delinquency or default. The Board believes that, although consumers in delinquency or default may not have other credit options available to them, they should be aware of the costs incurred in modifying any term of the existing legal obligation. Providing new TILA disclosures in these instances will make these consumers aware of, and help them to verify, the changes being made to their existing obligation and the costs of the modification; this serves TILA's purpose of helping consumers "avoid the uninformed use of credit." 15 U.S.C. 1601(a).

At the same time, the Board recognizes that charging some fees for underwriting or processing a modification may be necessary, and is concerned that requiring new disclosures whenever necessary and reasonable fees are charged could discourage creditors from offering workouts. As discussed above, the Board solicits comment on whether proposed § 226.20(a)(1)(i)(B) should permit creditors to rely on the exceptions to the requirement to give new disclosures (such as where the consumer is in delinquency or default under proposed § 226.20(a)(1)(ii)(B)), even if they charge certain fees. Specifically, the Board solicits comment on whether there are any fees that creditors should be allowed to charge without triggering the requirement to give new disclosures. Should permitted fees, if any, include only those paid to third parties (who are not affiliates of the creditor), or should certain fees retained by the creditor or the creditor's affiliates be permitted without triggering the requirement to give new disclosures? Should the Regulation Z provide that creditors can retain a *de minimis* fee without triggering disclosure requirements? What amount would be appropriate for exclusion? Should the amount be stated in terms of a dollar amount, a percentage of the loan, or both?

Proposed comment 20(a)(1)(ii)(B)–1 clarifies that this exception is available for all types of workout arrangements offered to consumers in delinquency or default, such as forbearance, repayment or loan modification agreements, unless the loan amount or the interest rate increase, or a fee is imposed on the consumer in connection with the agreement. Proposed comment 20(a)(1)(ii)(B)–1 also cross references § 226.20(a)(1)(i)(B) and corresponding commentary regarding fees.

The Board believes that most workout arrangements will involve fees imposed on the consumer and therefore, will be covered under the proposed definition of new transaction for mortgages and require new disclosures. However, depending on the scope of fees that may or may not be allowed under this proposed exception, some workout agreements might not be covered and new disclosures would not be required. Outreach conducted in connection with this proposal revealed that lack of information regarding the terms of the modified loan offered to consumers is a concern with many of the loan modifications offered to delinquent or defaulting consumers. Although modification agreements contain the final credit terms, they are typically contracts in dense prose that use legal terms unfamiliar to most consumers. As a result, many consumers may not be able to determine readily how much is actually owed on the new loan, or may simply be unaware of their new monthly payment amount.

Thus, the Board is concerned that the exception for modifications in circumstances of delinquency or default under proposed § 226.20(a)(1)(ii)(B) may result in some consumers not receiving new disclosures, and therefore not knowing how their terms are being modified. To address this concern, the Board could adopt a rule requiring servicers to provide a full TILA disclosure for every modification that occurs in cases of delinquency or default. At the same time, however, disclosures required under existing TILA and Regulation Z may not offer a clear comparison of existing terms to changed terms and, therefore, may not help consumers to understand the impact of the modification on their credit terms. Thus, the Board solicits comment on whether to require a new, streamlined disclosure that highlights changed terms in an effort to ensure that consumers are aware of changes made to their existing legal obligation. Although delinquent or defaulting consumers may not have an opportunity to shop for other credit options, a streamlined disclosure provided in these instances could enable a consumer to compare the changed terms that are offered to other alternatives, such as a short sale or a deed-in-lieu of foreclosure.

The Board recognizes that servicers would incur significant operational and compliance costs to implement a requirement to give a new, streamlined disclosure for modifications in the context of delinquency or default. Thus, the Board solicits comment on whether modifying the proposed exception under § 226.20(a)(1)(ii)(B) and requiring a new, streamlined disclosure that highlights changed terms would be preferable to eliminating the exception under proposed § 226.20(a)(1)(ii)(B) entirely. Eliminating the exception would require servicers to provide a full TILA disclosure in all cases. The Board seeks comment on the relative benefits and costs associated with either approach.

In addition, the Board considered, but does not propose, extending the exception under proposed § 226.20(a)(1)(ii)(B) to consumers who are in "imminent" delinquency or default. The Board is aware that current government-sponsored modification programs specifically address consumers in imminent "danger" of default or delinquency. However, the Board believes that these consumers are more likely to have other financing options than those who are already delinquent or in default. Thus, a new TILA disclosure would apprise these consumers of new credit terms and allow them to compare other available credit options, which serves TILA's purpose to inform consumers about their credit terms and help them shop for credit. TILA Section 102(a); 15 U.S.C. 1601(a). Moreover, the Board believes it would be difficult to define the term "imminent default" with sufficient clarity to facilitate compliance and avoid undue litigation risk. Nevertheless, the Board seeks comment on whether providing an exception for consumers who are in "imminent" delinquency or default is appropriate, and whether such an exception could be crafted with sufficient clarity to facilitate compliance and avoid posing undue litigation risk to creditors.

Decreases in the interest rate. Section 226.20(a)(2) currently provides an exception from the definition of a "refinancing" for closed-end credit transactions that decrease the APR with a corresponding decrease in the payment schedule (*i.e.,* a decrease in the payment amount or number of payments), even if the change in term results in "satisfaction and replacement" of the existing legal obligation. *See* comments 20(a)(2)–1 and –2.

Proposed § 226.20(a)(1)(ii)(C) provides that, for mortgage credit, a decrease in the contractual interest rate is not a new transaction under the following circumstances: (1) No other modifications are made, except a decrease in the periodic payment amount, an extension of the loan term, or both, and (2) no fee is imposed on the consumer in connection with the modification. This proposed exception differs from the existing exception under § 226.20(a)(2) because it would: (1) Be available only for decreases in the contract note rate (not the APR), (2) allows for decreasing the periodic payment amount and extending (rather than shortening) the loan term, and (3) does not allow any fees to be imposed on the consumer as part of the change. For example, as indicated in proposed comment 20(a)(1)(ii)(C)–1, the exception under proposed § 226.20(a)(1)(ii)(C) would be unavailable to creditors who decrease the interest rate, but then add a prepayment penalty and impose a fee on the consumer.

Exempting creditors from the requirement to provide a complete new set of disclosures in situations specified in proposed § 226.20(a)(1)(ii)(C) is intended to facilitate changes that are helpful to consumers. The Board believes that where creditors decrease the consumer's note rate and the periodic payment amounts, the modification is beneficial to the consumer. The Board also believes that decreasing the note rate and increasing the loan term can benefit consumers at risk of default or delinquency, because creditors may give consumers the option to defer payments for a period of time and make them after the existing maturity date. By contrast, shortening the loan term may increase periodic payment amounts even if the interest rate is decreased, making it more difficult for consumers to meet payment obligations. Transactions such as deferrals, forbearance agreements, or renewals, are typically entered into in response to a request by a consumer who is suffering a temporary financial hardship, or for consumers with seasonal income. These transactions may simply extend the loan term or provide for new payment due dates. For these reasons, the Board believes that where the interest rate is increased, but no other modifications to the terms are made except for an extension of the loan term, the benefit of the TILA disclosure to the consumer is outweighed by the risk that creditors may be discouraged from extending these types of beneficial modifications. Again, however, in all cases where a fee is imposed on the consumer in connection with a modification, a new transaction requiring new disclosures occurs, regardless of whether the fee is reflected in any agreement between the parties. *See* proposed § 226.20(a)(1)(i)(B) and (a)(1)(ii)(C).

Outreach efforts revealed that, apart from loss mitigation, rate decreases are typically offered as part of customer retention programs in a falling rate environment, and that these programs may offer consumers some savings in closing costs, such as lower or no title insurance fees. However, in exchange for decreasing the interest rate, a consumer may have to pay other significant closing costs (such as application or origination fees) or accept new terms that pose risk, such as a prepayment penalty or shared-equity feature. The Board believes that in these cases, consumers should be afforded a meaningful opportunity to review the credit terms offered and compare them to other available credit options. For example, where consumers must pay a fee to modify a key term of an existing mortgage, they should be aware of this cost, and be able to compare the cost of the modification and its terms to other available credit options. Thus, the Board believes that in these instances consumers should receive new TILA disclosures and be afforded the right to rescind and the special protections in § 226.35, if applicable. As discussed in greater detail above, the Board solicits comment on whether some fees, such as third party fees, should be permitted without triggering disclosure requirements, or whether all fees paid by the consumer out of loan proceeds or out-of-pocket in connection with these transactions should trigger the requirement to provide new TILA disclosures.

Proposed comment 20(a)(1)(ii)(C)–1 explains that a decrease in the interest rate occurs if the contractual interest rate (the fully-indexed rate for an adjustable-rate mortgage) for the new loan at the time the new transaction is consummated is lower than the interest rate (the fully-indexed rate for an adjustable-rate mortgage) of the existing obligation in effect at the time of the modification. This comment clarifies that a decrease in the interest rate is not a new transaction under § 226.20(a)(1) under the following circumstances: no additional fees or other changes are made to the existing legal obligation, except that the payment schedule may reflect lower periodic payments or a lengthened maturity date. The comment further clarifies that the exception in § 226.20(a)(1)(ii)(C) does not apply if the maturity date is shortened, or if the payment amount or number of payments is increased beyond that remaining on the existing transaction.

Proposed comment 20(a)(1)(ii)(C)–1 also provides examples of modifications to terms that would and would not result in a new transaction requiring new disclosures under proposed § 226.20(a)(1). First, if a creditor lowers the interest rate of an existing legal obligation and retains the existing loan term of 30 years (resulting in lower monthly payments), no new disclosures are required. Second, if a creditor lowers the interest rate and also enters into a six-month payment forbearance arrangement with the consumer, with those six months of payments to be added to the end of the loan term (resulting in a longer loan term), no new disclosures are required. However, the comment indicates that a new transaction requiring new disclosures occurs if the creditor lowers the interest rate and shortens the loan term from, for example, 30 to 20 years. Moreover, a new transaction requiring new disclosures also occurs if the creditor lowers the interest rate but adds a new term, such as a prepayment penalty, or imposes a fee on the consumer.

Finally, this comment cross references proposed comments 20(a)(1)(i)(C)–1, 20(a)(1)(i)(D)–1, and 20(a)(1)(i)(B)–1 to provide further guidance to creditors regarding changes in the loan term, interest rate, and imposition of fees, respectively. To reflect the revisions related to rate changes discussed above, the Board proposes to eliminate the existing exception for APR reductions under existing § 226.20(a)(2) and corresponding commentary as unnecessary for mortgage credit, but to retain this exception for non-mortgage credit, which was not subject to review as part of this proposal. *See* proposed § 226.20(a)(2)(ii) and accompanying commentary.

Renewals. The Board proposes to eliminate the current exception for renewals under existing § 226.20(a)(1) for closed-end mortgages. This exception appears to have limited applicability to closed-end mortgages because it relates principally to single payment obligations. Typically, mortgages are not structured as single payment obligations or periodic payments of interest with no principal reduction. However, the Board seeks comment on whether there are any circumstances under which this exception may be appropriate for closed-end mortgages.

Optional insurance. The Board proposes to eliminate the current exception for optional insurance under existing § 226.20(a)(5) as unnecessary under the proposal. Proposed § 226.20(a)(1)(i) does not treat as a new transaction the renewal of an expired insurance policy. The Board believes that renewing an expired insurance policy that was originally disclosed at consummation does not, by itself, create a new "credit" transaction.

20(a)(2) and (3)

Refinancings by the Same Creditor—Non-mortgage Credit; Unearned Finance Charge

As noted above, the Board is proposing to redefine when modifications to terms result in new transactions for closed-end credit secured by real property or a dwelling under new § 226.20(a)(1). Accordingly, the Board is proposing to redesignate existing § 226.20(a) as new § 226.20(a)(2), which would apply to transactions not secured by real property or a dwelling, and proposes conforming and technical revisions, as discussed more fully below.

Current § 226.20(a) would be redesignated as new § 226.20(a)(2) and would continue to provide that a "refinancing" occurs upon "satisfaction and replacement" for all non-mortgage closed-end credit transactions; no substantive change is intended. Existing § 226.20(a)(2), regarding treatment of unearned finance charges that are not credited to the existing obligation, would be redesignated as new § 226.20(a)(3) and revised to clarify that the rule applies to all closed-end credit transaction types, including mortgages; no other substantive change is intended.

In technical revisions, comments 20(a)–1 through –3, which generally address the definition of "satisfaction and replacement," would be redesignated as new comments 20(a)(2)–1 through –3 and revised to reflect their coverage of transactions not secured by real property or a dwelling; no substantive change is intended. Current comment 20(a)(1)–4 addresses treatment of unearned finance charges not credited to the existing obligation and would be redesignated as new comment 20(a)(3)–1, and revised to reflect that it also applies to the proposed definition of "new transaction" for closed-end credit secured by real property or a dwelling; no other substantive change is intended. Current comment 20(a)–5 addresses coverage of the general definition of refinancing and would be redesignated as comment 20(a)(2)–4; no substantive change is intended.

Existing § 226.20(a)(1)–(5) addresses exceptions to the general definition of refinancing under current § 226.20(a). In technical revisions, § 226.20(a)(1)–(5) would be redesignated as new § 226.20(a)(2)(i)–(v), and corresponding commentary 20(a)(1)–(5) would be redesignated as new comments 20(a)(2)(i)–(v); no substantive change is intended.

Impact of Proposed § 226.20(a)(1) on Other Rules

Interaction of proposed § 226.20(a)(1) with the right of rescission. Currently, only certain refinancings are subject to the right of rescission. Specifically, refinancings that provide a "new advance of money" or add a security interest in the consumer's principal dwelling are subject to rescission, whether the same creditor (*i.e.,* current holder) is the original creditor or an assignee. *See* comment 23(f)–4. Refinancings that occur with the original creditor or its successor are exempt under § 226.23(f)(2). As discussed more fully in the section-by-section analysis to § 226.23(f)(2), the Board is proposing to narrow the exemption from rescission to only those refinancings that involve the original creditor who is also the current holder. Thus, the exemption from rescission under proposed § 226.23(f)(2) would be available only for refinancings with the original creditor that is also the current holder of the note, and which do not advance new money or add a security interest in the principal dwelling.

Proposed § 226.20(a)(1) would expand the number of closed-end mortgage transactions considered "new transactions" generally subject to rescission. Under existing § 226.20(a), many modifications currently do not result in "satisfaction and replacement" under applicable State law, and therefore are currently not "refinancings" that trigger new disclosures and the right to rescind. Proposed § 226.20(a)(1)(i) for closed-end mortgage transactions, however, would result in many of these modifications being "new transactions" that require TILA disclosures. In addition, the scope of proposed § 226.20(a)(1)(i) would continue to apply to modifications with the same creditor, which would be defined as the current holder or servicer acting on behalf of the current holder. Thus, "new transactions" with the current holder, or servicer acting on behalf of the current holder, would be subject to the consumer's right to rescind under § 226.23, unless exempt from the right of rescission under § 226.23(f)(2), because they involve the original creditor who is also the current holder of the note and do not entail advancing new money or adding a security interest in the consumer's principal dwelling.

To illustrate, assume that a consumer and the original creditor, who is also the current holder of the note, agree to modify an existing obligation secured by the consumer's principal dwelling to (a) Reduce the consumer's interest rate, (b) advance the consumer $10,000 to consolidate bills, and (c) finance $3,000 in closing costs. This transaction is a "new transaction" requiring TILA disclosures, even if the existing obligation is not satisfied and replaced, because the loan amount increased by $13,000. *See* proposed § 226.20(a)(1)(i)(A). In addition, the consumer may rescind the transaction to the extent of the new advance of money, *i.e.,* the $10,000 advanced to the consumer to consolidate bills. In the same example, if the original creditor did not advance $10,000, the consumer would not have the right to rescind because there would be no "new advance of money" as defined in comment 23(f)–4. However, a new transaction would still occur, and new disclosures would be required, because the loan amount increased by $3,000. *See* proposed § 226.20(a)(1)(i)(B). As noted above, the Board solicits comment on whether the scope of modifications under proposed § 226.20(a)(1) that would result in new transactions being subject to the right of rescission is appropriate, or should be narrower or broader.

The Home Mortgage Disclosure Act (HMDA) and Regulation C. HMDA requires financial institutions to report data on "refinancings." Under Regulation C, a refinancing occurs when the existing obligation is satisfied and replaced; the regulation and commentary do not refer to the parties' contract or applicable law.[47] As a result, "refinancings" must be reported, whereas mere renewals and modifications are not. Although consistency between the rules facilitates compliance, the Board notes that the purposes of TILA and HMDA differ. TILA is focused on promoting the informed use of credit through meaningful disclosure of credit terms. HMDA requires financial institutions to provide data to the public to aid in determining how well the institution is serving the housing needs of its community, and to aid in fair lending enforcement. However, some creditors have indicated that they currently treat transactions similarly for purposes of both Regulation Z and Regulation C, except for consolidation, extension, and modification agreements (CEMAs).[48] The Board anticipates reviewing HMDA and Regulation C at a later date, and seeks comment on whether "refinancing" in Regulation C should be defined the same or differently than "refinancing" under proposed § 226.20(a)(1), and the operational and compliance difficulties raised by either approach.

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act). Congress enacted the SAFE Act on July 30, 2008, to mandate a nationwide licensing and registration system for mortgage loan originators.[49] On July 28, 2010, the Board, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Farm Credit Administration, and the National Credit Union Administration (the agencies) issued joint final rules to implement the SAFE Act for individuals employed by agency-regulated institutions.[50] The joint final rule requires individuals that meet the definition of "mortgage loan originator" to be licensed and registered in the Nationwide Mortgage Licensing System and Registry ("Registry") in order to engage in residential mortgage transactions. For purposes of this licensing and registration requirement, "mortgage loan originator" is defined as an individual who takes a residential mortgage loan application and offers or negotiates terms of a residential mortgage loan for compensation or gain.[51] In the preamble to the final rule, the agencies state that the term "mortgage loan originator" generally does *not* include individuals who engage in transactions such as modifications or assumptions that do not result in the extinguishment of the existing loan and the replacement by a new loan (*i.e.,* satisfaction and replacement).[52] Thus, under the SAFE Act and implementing regulations, individuals that modify the terms of existing loans, or allow existing loans to be assumed, are generally not considered "mortgage loan originators," and do not need to obtain a license or register in the Registry.

In contrast to the SAFE Act, under this proposal modifications to certain loan terms would be new transactions requiring new TILA disclosures even if not satisfied and replaced under applicable State law. *See* proposed § 226.20(a)(1). The Board recognizes that proposed § 226.20(a)(1) takes a different approach to modifications than the SAFE Act regulations, but notes that the purposes of the SAFE Act and TILA differ. The SAFE Act seeks to improve communications among regulators, increase accountability of loan originators, reduce fraud, and provide consumers with free and easily accessible information regarding the employment history of, and certain disciplinary and enforcement actions against, mortgage loan originators. TILA, on the other hand, focuses on promoting the informed use of credit through meaningful disclosure of credit terms in order to facilitate consumers' ability to compare available credit options. TILA Section 102(a); 15 U.S.C. 1601(a). The

[47] 12 CFR 203.2(k).

[48] In 2002, the Board clarified that CEMAs are not reportable under Regulation C. *See* 67 FR 7227, Feb. 15, 2002.

[49] 12 U.S.C. 5101–5116.

[50] 75 FR 44656, July 28, 2010. Mortgage loan originators not employed by agency-regulated institutions must license and register in accordance with the regime provided by the applicable state within the timeframes prescribed under the SAFE Act.

[51] *See, e.g.,* 24 CFR 208.102(b), implementing § 1503(3) of the SAFE Act, 12 U.S.C. 5102(3), and App. A to Subpart I of Pt 208, which provides examples of mortgage loan originator activities.

[52] 75 FR at 44662–44663, July 28, 2010.

Board believes that proposed § 226.20(a)(1) serves TILA's purposes. Thus, under the proposal, when the parties to an existing agreement modify key loan terms, TILA disclosures should be provided to the consumer. However, the Board seeks comment on any operational and compliance difficulties raised by the approach proposed under § 226.20(a)(1), specifically in relation to the definition of "mortgage loan originator" under the SAFE Act for purposes of its licensing and registration requirements.

20(c) Rate Adjustments

Background

Currently, § 226.20(c) requires that disclosures be provided when adjustments are made to the interest rate of an ARM subject to § 226.19(b).[53] The timing of the disclosures required by § 226.20(c) depends on whether or not a payment adjustment accompanies an interest rate adjustment. If a payment adjustment accompanies an interest rate adjustment, a creditor must deliver or mail disclosures regarding the interest rate and payment adjustment at least 25, but no more than 120, days before payment at a new level is due. If interest rate adjustments are made during the year without accompanying payment adjustments, a creditor must disclose the rates charged at least once during that year.

In the August 2009 Closed-End Proposal, the Board proposed to revise § 226.20(c) to require that disclosures be provided between 60 and 120 calendar days before payment at a new level is due, if a payment adjustment accompanies an interest rate adjustment.[54] That proposal is designed to ensure that consumers have adequate advance notice of a payment change to seek to refinance or modify the loan if they cannot afford the adjusted payment. The Board also proposed to revise the content and format of disclosures required by § 226.20(c), based on consumer testing, to improve consumer understanding of pending interest and payment adjustments and provide additional important information.[55] In addition, the Board proposed to replace the term "variable-rate mortgage" with the more commonly understood term "adjustable-rate mortgage."

In this proposal, the Board proposes to clarify that proposed § 226.20(c) applies to ARM adjustments that are based on interest rate adjustments provided for under the terms of an existing legal obligation. On the other hand, disclosures are not required under proposed § 226.20(c) when an ARM adjustment is not made pursuant to an existing loan agreement, such as if the parties modify the terms of their loan agreement. If the parties increase the interest rate or payment or a fee is imposed in connection with the modification, however, proposed § 226.20(a) requires that new TILA disclosures be provided unless an exception applies. A detailed discussion of the proposed rules for modifications is set forth in the section-by-section analysis of proposed § 226.20(a).

The Board's Proposal

Proposed § 226.20(c) provides that, if an adjustment is made to an ARM's interest rate, with or without a corresponding adjustment to the payment, disclosures must be provided to the consumer. Proposed § 226.20(c) provides further that disclosures are required only for ARMs subject to § 226.19(b) and to adjustments made based on the terms of the existing legal obligation between the parties.[56] The Board believes that it is not necessary to provide disclosures under § 226.20(c) when adjustments not provided for under the existing legal obligation are made, because more comprehensive disclosures are required under proposed § 226.20(a) if a loan modification increases a loan's interest rate or payment or a fee is imposed in connection with a loan modification. In some circumstances, moreover, providing disclosures under § 226.20(c) 60 to 120 days before payment at a new level is due may delay beneficial modifications to a consumer's loan terms or otherwise may be impractical.

Proposed § 226.20(c) clarifies that an interest rate adjustment for which disclosures are required under § 226.20(c) includes an interest rate adjustment made when an ARM subject to § 226.19(b) is converted to a fixed-rate transaction as provided under the existing legal obligation between the parties. The requirement to provide disclosures under § 226.20(c) in connection with conversion of an ARM to a fixed-rate transaction is consistent with current comment 20(c)–1, which the Board proposed to incorporate into § 226.20(c) under the August 2009 Closed-End Proposal.

Proposed comment 20(c)–1 clarifies that § 226.20(c) applies only if adjustments are made under the terms of the existing legal obligation between the parties. Typically, these adjustments will be made based on a change in the value of the applicable index or on the application of a formula. Proposed comment 20(c)–1 also clarifies that if an interest rate adjustment is not based on the terms of the existing legal obligation, then no disclosures are required under § 226.20(c). Proposed comment 20(c)–1 clarifies that an interest rate adjustment not based on the terms of the existing legal obligation likely would require new TILA disclosures under proposed § 226.20(a). For example, proposed comment 20(c)–1 states that no disclosures are required under § 226.20(c) when an adjustment to the interest rate is made pursuant to a modification of the legal obligation, but such modification may be a new transaction for which the creditor must provide new disclosures under § 226.20(a). Proposed comment 20(c)–1 states further that disclosures must be given under § 226.20(c) if that new transaction is an adjustable-rate mortgage subject to § 226.20(c) and the interest rate is adjusted based on a change in the index value or on the application of a formula as provided in the modified legal obligation.

Examples. Proposed comment 20(c)–1 provides examples to illustrate whether or not disclosures are required under § 226.20(c) in different circumstances. Proposed comment 20(c)–1.i provides an example of a case where disclosures are required under § 226.20(c), assuming that: (1) The loan agreement provides that the interest rate on an ARM subject to § 226.19(b) will be determined by the 1-year LIBOR plus a margin of 2.75 percentage points; (2) the consumer's current interest rate is 6%, based on the index and margin; (3) the loan agreement provides that the interest rate will adjust annually and the corresponding payment will be due on October 1; and (4) when the adjusted interest rate is determined, the 1-year LIBOR for 2010 has increased by 2 percentage points over the 1-year LIBOR

[53] Section 226.19(b) currently requires certain disclosures before application for closed-end loans secured by a consumer's principal dwelling with a term greater than one year, if the APR may increase after consummation. Under the August 2009 Closed-End Proposal, proposed § 226.19(b) applies generally to an "adjustable-rate mortgage" described in § 226.38(a)(3), *i.e.,* to a closed-end mortgage secured by real property or a dwelling if the APR may increase after consummation, with certain exclusions. *See* proposed § 226.19(b) and comment 19(b)–3, 74 FR 43232, 43327, 44333, Aug. 26, 2009. For a discussion of proposed § 226.19(b), see 74 FR at 43262–43268.

[54] For a discussion of the proposed amendments to timing requirements for ARM adjustment notices under § 226.20(c), see 74 FR at 43269–43271.

[55] For a discussion of proposed revisions to the required content of disclosures under § 226.20(a), see 74 FR at 43271–43273.

[56] Under the August 2009 Closed-End Proposal, § 226.19(b) does not apply to "price level adjusted mortgages" and certain other mortgages for which the APR may increase after consummation. Therefore, disclosures are not required for such mortgages under § 226.20(c). For a discussion of such mortgages, see 74 FR 43232, 43264, August 26, 2009.

for 2009. Under the terms of the loan agreement, therefore, the interest rate will be adjusted to 8%, and the corresponding payment will be due on October 1, 2010. Proposed comment 20(c)–1 provides that, in the case illustrated by the example, the notice required by § 226.20(c)(1) must be provided 60 to 120 days before the corresponding payment is due, that is, between June 3 and August 2, 2010.

Proposed comment 20(c)–1.ii provides an example of a case where disclosures are not required under § 226.20(c), assuming the same loan agreement and facts as in the previous example, except that on January 4, 2010 the parties modify the loan agreement and the consumer pays a $500 modification fee. Proposed comment 20(c)–1.ii provides the additional assumptions that: (1) The parties agree that the consumer's current interest rate will be reduced temporarily from 6% to 4.5%, with the corresponding payment due on February 1, 2010; (2) after modification, interest rate adjustments will continue to be made based on adjustments to the 1-year LIBOR and the corresponding payment will continue to be due on October 1; and (3) when the adjusted interest rate is determined, the 1-year LIBOR for 2010 has increased by 2 percentage points over the 1-year LIBOR for 2009. Under those assumptions, the payment due on October 1, 2010 will be based on an interest rate of 8% applied because of an adjustment in the 1-year LIBOR. Proposed comment 20(c)–1.ii states that, in the example, notice need not be provided under § 226.20(c)(1) 60 to 120 days before payment based on the interest rate of 4.5% is due on February 1, because that payment change is not made based on an interest rate adjustment provided for in the original loan agreement. Proposed comment 20(c)–1.ii clarifies that disclosures may be required before modification under § 226.20(a), however. Moreover, proposed comment 20(c)–1.ii states that notice must be provided under § 226.20(c)(1) 60 to 120 days before payment based on the interest rate of 8% is due on October 1 (that is, the creditor must send a notice between June 3 and August 2, 2010); this is because the payment due on October 1 is made based on change in the value of the index applied as provided for in the modified loan agreement.

Mortgages not covered. Currently, comment 20(c)–2 states that § 226.20(c) does not apply to "shared-equity," "shared-appreciation," or "price level adjusted" or similar mortgages. Under the August 2009 Closed-End Proposal, the Board proposed to remove the references to "shared-equity" and "shared-appreciation" mortgages. Under the August 2009 Closed-End Proposal, these types of mortgages are adjustable-rate mortgages only if the loan has an adjustable rate. For example, a fixed-rate mortgage with an equity sharing feature would not be an adjustable-rate mortgage under the August 2009 Closed-End Proposal. Thus, whether or not ARM adjustment notices are required for shared-equity or shared-appreciation mortgages depends on whether the mortgage has an adjustable rate or a fixed rate.[57] The Board also proposed to add a cross-reference to comment 19(b)–3, which under the August 2009 Closed-End Proposal clarifies that "price level adjusted" mortgages and certain other mortgages whose APR may change after consummation are not ARMs subject to § 226.19(b) and therefore are not subject to § 226.20(c). The Board now proposes to revise comment 20(c)–2 further for clarity.

Conversion. Under the Board's August 2009 Closed-End Proposal, the Board proposed to incorporate into § 226.20(c) commentary stating that the requirements of § 226.20(c) apply when the interest rate and payment adjust following conversion of an ARM subject to § 226.19(b) to a fixed-rate mortgage.[58] *See* comment 20(c)–1. The Board now proposes to clarify that § 226.20(c) applies if such a conversion is made in accordance with an existing legal obligation. Proposed § 226.20(c) states that interest rate adjustments made pursuant to the terms of an existing legal obligation include adjustments made upon conversion of an ARM to a fixed-rate transaction.

Proposed comment 20(c)–4 clarifies that § 226.20(c) applies to adjustments made when an adjustable-rate mortgage is converted to a fixed-rate mortgage if the existing legal obligation provides for such conversion and establishes a specific index and margin or formula to be used to determine the new interest rate. Proposed comment 20(c)–4 clarifies further, however, that if the existing legal obligation does not provide for conversion or provides for conversion but does not state a specific index and margin or formula to be used to determine the new interest rate, or if the parties agree to change the index, margin, or formula to be used to determine the interest rate upon conversion, new disclosures instead may be required under § 226.20(a). Proposed comment 20(c)–4 clarifies further that disclosures may be required under § 226.20(a) if a conversion fee is charged, whether or not the legal obligation establishes the amount of the conversion fee, or loan terms other than the interest rate and corresponding payment are modified. Finally, proposed comment 20(c)–4 clarifies that if an open-end account is converted to a closed-end transaction subject to § 226.19(b), disclosures need not be provided under § 226.20(c) until adjustments subject to § 226.20(c) are made following conversion. This is consistent with current comment 20(c)–1.

The Board solicits comment on whether, when an ARM is converted to a fixed-rate transaction as provided in an existing legal obligation, new TILA disclosures under § 226.20(a) should be provided instead of notice of an interest rate adjustment under § 226.20(c). Would new TILA disclosures be more useful to consumers who are deciding whether to convert an ARM into a fixed-rate mortgage on terms established under an existing legal obligation or to seek a fixed-rate mortgage from a different creditor? Would potential liability risk from providing new disclosures under § 226.20(a), including rescission in rescindable transactions, discourage creditors from providing ARMs with a conversion option?

Previously proposed revisions. The new revisions the Board now proposes address the applicability of § 226.20(c) and would be made only to the introductory text of § 226.20(c) and commentary associated with that introductory text. For ease of reference, however, this proposal republishes proposed revisions to disclosure timing, content, and format requirements under § 226.20(c)(1) through (5) and associated commentary proposed previously under the August 2009 Closed-End Proposal. The Board requests that interested parties limit the scope of their comments to the newly proposed changes to the introductory text of § 226.20(c) and proposed comments 20(c)–1 through –4.

Section 226.22 Determination of Annual Percentage Rate

22(a) Accuracy of Annual Percentage Rate

The APR is a measure of the cost of credit, expressed as a yearly rate, that relates the amount and timing of value received by a consumer to the amount and timing of payments made. § 226.22(a)(1). The APR must be determined in accordance with either the actuarial method or the United States Rule method. *Id.* TILA Section 107(c) provides a general tolerance for the accuracy of a disclosed APR. 15

[57] *See* 74 FR 43232, 43270, 43405, Aug. 26, 2009.

[58] *See id.* 43270, 43329–43330.

U.S.C. 1606(c). TILA Section 106(f) provides special tolerances for disclosure of a finance charge "and other disclosures affected by any finance charge" for a closed-end credit transaction secured by real property or a dwelling. 15 U.S.C. 1605(f). TILA Section 107(c) is implemented in § 226.22(a)(2) and (3), and TILA Section 106(f) is implemented in § 226.22(a)(4) and (5).

The Board proposes to add examples to illustrate whether the APR disclosed for a mortgage transaction is considered accurate where the finance charge and APR are overstated. The Board proposes further to clarify that the tolerances under proposed § 226.23(a)(5)(ii), applicable for purposes of rescission, do not apply in determining under § 226.19(a) whether a creditor must provide corrected disclosures that a consumer must receive at least three business days before consummation. (The Board proposes to redesignate § 226.23(g) and (h)(2), as discussed below in the section-by-section analysis of proposed § 226.23(a)(5)(ii).) The Board also proposes minor clarifying amendments to § 226.22(a).

In addition, the Board proposes several technical amendments to § 226.22(a). The Board proposes to integrate footnote 45d into § 226.22(a)(1) and to redesignate existing regulatory text. The Board proposes further to revise § 226.22(a) to use the term "interest and settlement charges" instead of "finance charge" when referring to a disclosed finance charge, consistent with a terminology change proposed for closed-end mortgage transactions in proposed § 226.38(e)(5)(ii) under the August 2009 Closed-End Proposal.[59] Also, the Board proposes to add headings to § 226.22(a)(1), (a)(2), and (a)(3), to clarify that those provisions address a closed-end credit transaction's actual APR, a tolerance for a regular transaction, and a tolerance for an irregular transaction, respectively. Finally, the Board proposes conforming amendments to headings for commentary on § 226.22(a)(1), (a)(2), and (a)(3).

22(a)(1) Actual Annual Percentage Rate

Section 226.22(a)(1) states that the APR for a closed-end credit transaction is a measure of the cost of credit, expressed as a yearly rate, that relates to the amount and timing of value received by the consumer to the amount and timing of payments made. Section 226.22(a)(1) states further that the APR for a closed-end credit transaction is to be determined in accordance with the actuarial method or the United States Rule method. Footnote 45d to § 226.22(a)(1) states that an error in disclosure of an APR or finance charge shall not, in itself, be considered a violation of this regulation if: (1) The error resulted from a corresponding error in a calculation tool used in good faith by the creditor; and (2) upon discovery of the error, the creditor promptly discontinues use of that calculation tool for disclosure purposes and notifies the Board in writing of the error in the calculation tool. The Board has stated that footnote 45d protects creditors from administrative enforcement, including restitution, for errors in a calculation tool used in good faith. *See* 48 FR 14883, Apr. 3, 1983. (TILA Section 130(c) protects creditors from civil liability for violations resulting from such errors. 15 U.S.C. 1640(c).)

The Board proposes to integrate the text of footnote 45d into § 226.22(a) and to remove the footnote. First, the Board proposes to redesignate the existing text of § 226.22(a)(1) as proposed § 226.22(a)(1)(i). The Board also proposes to redesignate comment 22(a)(1)–2 as comment 22(a)(1)(i)–2 and revise the comment to clarify that a previously proposed requirement that disclosures for closed-end mortgage transactions use the term "interest and settlement charges" in place of the term "finance charge," discussed above, does not affect how an APR is calculated using the actuarial method.

Next, the Board proposes to add a new § 226.22(a)(1)(ii) that contains the text of footnote 45d. However, proposed § 226.22(a)(1)(ii) omits a statement in footnote 45d that could be read to mean that an error in the disclosure of the APR or finance charge resulting from an error in a calculation tool used in good faith (but no longer used) is a violation of Regulation Z if a creditor does not notify the Board in writing of the error in the calculation tool. That statement is inconsistent with TILA Section 130(c), which provides that a creditor or assignee may not be held liable in any action brought under TILA Section 125 or TILA Section 130 if the creditor or assignee shows by a preponderance of the evidence that the violation was not intentional and resulted from a *bona fide* error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. 15 U.S.C. 1640(c). Examples of a *bona fide* error include calculation errors and computer malfunction and programming errors. *Id.*

The Board also proposes to redesignate comment 22(a)(1)–5, regarding good faith reliance on faulty calculation tools, as comment 22(a)(1)(ii)–1, and to revise the comment to clarify that the "finance charge" is disclosed as "interest and settlement charges" for purposes of mortgage transaction disclosures. The Board further proposes to add a conforming heading, and update a cross-reference to footnote 45d.

22(a)(2) Regular Transaction

Section 226.22(a)(2) provides that, as a general rule, an APR for a closed-end credit transaction is considered accurate if the APR is not more than ⅛ of 1 percentage point above or below the APR determined in accordance with § 226.22(a)(1). The Board also proposes minor revisions to § 226.22(a)(2) for clarity.

22(a)(3) Irregular Transaction

Section 226.22(a)(3) provides that, in an irregular transaction, a disclosed APR is considered accurate if it is not more than ¼ of 1 percentage point above or below the actual APR. Footnote 46 to § 226.22(a)(3) clarifies that, for purposes § 226.22(a)(3), an irregular transaction is one that includes any of the following features: Multiple advances, irregular payment periods, or irregular payment amounts, other than an irregular first period or an irregular first or final payment. The Board proposes to integrate footnote 46 into proposed § 226.22(a)(3) and to set forth several types of "irregular transactions" currently described in comment 22(a)(3)–1.

Specifically, proposed § 226.22(a)(3)(i) states that the term "irregular transaction" includes: (1) A construction loan for which advances are made as construction progresses; (2) a transaction where payments vary to reflect the consumer's seasonal income; (3) a transaction where payments vary due to changes in a premium for or termination of mortgage insurance; and (4) a transaction with a graduated payment schedule where the contract commits the consumer to several series of payments in different amounts. Proposed § 226.22(a)(3)(ii) provides that the term "irregular transaction" does not include a loan with a variable-rate feature that has regular payment periods, however. The Board also proposes minor revisions to § 226.22(a)(3) for clarity.

The examples of transactions that are and are not irregular transactions are incorporated from current comment 22(a)(3)–1, with the exception of proposed § 226.22(a)(3)(i)(C). Proposed

[59] For a discussion of the proposed terminology change, see 74 FR 43232, 43307–43308, Aug. 26, 2009.

§ 226.22(a)(3)(i)(C) (currently footnote 45d) provides that an irregular transaction includes a transaction where payments vary due to changes in a premium for or termination of mortgage insurance. No substantive change is intended by incorporating this example of an irregular transaction into the regulation text, however.

22(a)(4) Mortgage Loans

Under TILA Section 106(f), a special tolerance for the disclosed finance charge and "other disclosures affected by any finance charge" applies for closed-end credit transactions secured by real property or a dwelling, in addition to the general tolerance for a regular transaction under § 226.22(a)(2) or for an irregular transaction under § 226.22(a)(3), as applicable. 15 U.S.C. 1605(f). TILA Section 106(f)(1) states that, in closed-end credit transactions secured by real property or a dwelling, the disclosure of the finance charge and other disclosures affected by the finance charge shall be treated as accurate if the amount disclosed as the finance charge (1) does not vary from the actual finance charge by more than $100; or (2) is greater than the amount required to be disclosed. 15 U.S.C. 1605(f)(1). (TILA Section 106(f) establishes a different tolerance for these transactions for purposes of rescission under TILA Section 125, as discussed below. 15 U.S.C. 1605(f)(2)). The APR is a disclosure "affected by" the finance charge. When implementing the special tolerance for mortgage loans in § 226.22(a)(4), the Board stated that if the APR is not considered to be a disclosure affected by the finance charge, "transactions in which the disclosed finance charge is misstated but considered accurate under the new tolerance would remain subject to legal challenge based on the disclosed APR, which seems inconsistent with the legislative intent." 61 FR 49237, 49242, Sept. 19, 1996.

Under § 226.22(a)(4), if the APR disclosed in a transaction secured by real property or a dwelling varies from the actual APR determined in accordance with § 226.22(a)(1), the disclosed APR is considered accurate if (1) the disclosed APR results from the disclosed finance charge, and (2) the disclosed finance charge would be considered accurate under § 226.18(d)(1). (Under the August 2009 Closed-End Proposal, § 226.38(e)(5)(ii) rather than § 226.18(d)(1) would set forth the accuracy tolerance for a finance charge disclosed for a closed-end mortgage transaction.[60]) Comment 22(a)(4)–1 currently provides an example of the APR tolerance where a disclosed APR results from a disclosed finance charge that is understated by $100 or less and therefore considered accurate under § 226.18(d)(1). The Board proposes to redesignate the current comment as comment 22(a)(4)–1.i and add an example that illustrates the operation of the APR tolerance where the disclosed finance charge and APR are overstated.

Proposed comment 22(a)(4)–1.ii provides that, if a creditor improperly includes a $200 fee in the interest and settlement charges on a regular transaction, the overstated interest and settlement charges are considered accurate under § 226.38(e)(5)(ii), and the APR that results from those overstated interest and settlement charges is considered accurate even if it falls outside the tolerance of ⅛ of 1 percentage point provided under § 226.22(a)(2). Proposed comment 22(a)(4)–1.ii clarifies that because the interest and settlement charges were overstated by $200 in the example, an APR corresponding to a $225 overstatement of the interest and settlement charges will *not* be considered accurate. Although the proposed example describes a regular transaction to which the ⅛ of 1 percentage point tolerance applies under § 226.22(a)(2), the same principles apply for an irregular transaction to which the ¼ of 1 percentage point tolerance applies under § 226.22(a)(3).

Special tolerances for rescission. TILA Sections 106(f)(2) and 125(*i*)(2) provide special tolerances for the finance charge and all related disclosures when a consumer asserts the right to rescind a closed-end mortgage transaction under TILA Section 125. 15 U.S.C. 1605(f)(2), 1635(*i*)(2). TILA Section 106(f)(2) provides that, for purposes of the right to rescind, the finance charge and disclosures affected by the finance charge are treated as accurate if the disclosed finance charge does not vary from the actual finance charge by more than an amount equal to one-half of one percent of the loan amount.[61] TILA Section 125(*i*)(2) provides a different tolerance if rescission is asserted as a defense to foreclosure. In that circumstance, the finance charge and all related disclosures are considered accurate if the disclosed finance charge does not vary from the actual finance charge by more than $35 or is greater than the actual finance charge. TILA Sections 106(f)(2) and 125(*i*)(2) are implemented in § 226.23(g) and (h) (proposed to be redesignated as § 226.23(a)(5)(ii)). The tolerances under TILA Sections 106(f)(2) and 125(*i*)(2) are larger than the tolerance of ⅛ of one percentage point provided for a regular transaction under TILA Section 107(c). Therefore, those tolerances limit the circumstances in which a consumer may rescind a loan based on inaccurate TILA disclosures.[62] 15 U.S.C. 1606(c).

With respect to the special APR tolerances for mortgage transactions under § 226.22(a)(4), proposed § 226.22(a)(4)(ii)(B) provides that, *for purposes of rescission,* the finance charge and all related disclosures are accurate if the finance charge is accurate under proposed § 226.23(a)(5)(ii), as applicable. Some creditors have asked the Board whether the larger tolerances under § 226.23(g) and (h) (proposed § 226.23(a)(5)(ii)) apply under § 226.19(a)(2) in determining whether a consumer must receive corrected disclosures at least three business days before consummation of *a rescindable transaction.* Section 226.19(a)(1)(i) requires creditors to provide good faith estimates of the TILA disclosures for all loans secured by a dwelling, within three business days of receiving a consumer's application. Section 226.19(a)(2) provides that if the difference between the actual APR and the disclosed APR exceeds the applicable tolerance, the creditor must provide corrected TILA disclosures that the consumer must receive at least three business days before consummation. In light of that requirement, some creditors have asked the Board whether, *for a rescindable transaction,* they need not provide corrected disclosures and wait three business days to consummate a transaction if a disclosed APR would be considered accurate under § 226.23(g) or (h) (proposed § 226.23(a)(5)(ii)) if the consumer tries to rescind in the future.

Proposed comment 22(a)(4)–2 clarifies that § 226.22(a)(4)(ii)(B) does not establish a special tolerance for determining whether corrected disclosures are required under

[60] Regarding the proposal to change where the finance charge tolerance for closed-end mortgage transaction is set forth, see the discussion of proposed revisions to § 226.18(d)(1) at 74 FR 43232, 43256, Aug. 26, 2009.

[61] For rescission of a refinancing of a principal balance made without a new consolidation or new advance, TILA Section 106(f)(2) provides a tolerance of one percent of the loan amount, provided the loan is not a high-cost HOEPA loan under TILA Section 103(aa), 15 U.S.C. 1602(aa). 15 U.S.C. 1605(f)(2).

[62] The tolerance for a regular transaction under TILA Section 107(c) is implemented in § 226.22(a)(2). TILA Section 107(c) provides that the Board may allow a greater tolerance to simplify compliance where irregular payments are involved. 15 U.S.C. 1606(c).

§ 226.19(a)(2) for rescindable mortgage transactions. The tolerances for the finance charge (interest and settlement charges) under § 226.23(g) and (h) (proposed § 226.23(a)(5)(ii)), apply only when the consumer actually asserts the right of rescission under § 226.23, as discussed above.

Conforming amendments. The Board proposes certain conforming amendments to § 226.22(a)(4). Section 226.22(a)(4) incorporates by reference finance charge tolerances under § 226.18(d)(1), as discussed above. Under the August 2009 Closed-End Proposal, proposed § 226.38(e)(5)(ii) instead of § 226.18(d)(1) would set forth the tolerances for the finance charge for a closed-end mortgage transaction, as discussed above. The Board proposes to revise § 226.22(a)(4) and comment 22(a)(4)–1 to replace the references to § 226.18(d)(1) with references to proposed § 226.38(e)(5)(ii). The Board also proposes to revise § 226.22(a)(4) and comment 22(a)(4)–1 to reflect that the term "interest and settlement charges" is used instead of the term "finance charge" for closed-end mortgage disclosures under the August 2009 Closed-End Proposal, as discussed above.

22(a)(5) Additional Tolerance for Mortgage Loans

Section 226.22(a)(5) provides an additional tolerance for transactions secured by real property or a dwelling. This additional tolerance avoids the anomalous result of imposing liability on a creditor for a disclosed APR that is not the actual APR but is closer to the actual APR than the APR that would be considered accurate under the statutory tolerance in § 226.22(a)(4). *See* 61 FR 49237, 49243, Sept. 19, 1996 (discussing the adoption of § 226.22(a)(5)). Section 226.22(a)(5), as proposed to be revised, states that if the disclosed interest and settlement charges are calculated incorrectly but considered accurate under proposed § 226.38(e)(5)(ii) or § 226.23(g) or (h) (proposed § 226.23(a)(5)(ii)), the disclosed APR is considered accurate if: (1) the disclosed interest and settlement charges are *understated* and the disclosed APR also is understated, but is closer to the actual APR than the APR that would be considered accurate under § 226.22(a)(4); or (2) the disclosed interest and settlement charges are *overstated* and the disclosed APR also is overstated but is closer to the actual APR than the rate that would be considered accurate under § 226.22(a)(4). Comment 22(a)(5)–1 illustrates the APR tolerance for mortgage transactions under § 226.22(a)(5), where a $75 omission from the finance charge for an irregular transaction occurs. The Board proposes to revise comment 22(a)(5)–1 for clarity and to reflect that the term "interest and settlement charges" is used instead of the term "finance charge" for closed-end mortgage disclosures under the August 2009 Closed-End Proposal.

New example for overstated APR. The Board also proposes to add an example that illustrates the APR tolerance in § 226.22(a)(5) where a disclosed APR is based on overstated interest and settlement charges. Proposed comment 22(a)(5)–1.ii provides the example of an irregular transaction for which the actual APR is 9.00 percent and the interest and settlement charges improperly include a $500 fee corresponding to a disclosed APR of 9.40 percent. That is, the disclosed APR of 9.40% results from disclosed interest and settlement charges that are considered accurate under previously proposed § 226.38(e)(5)(ii) because they are greater than the interest and settlement charges required to be disclosed and therefore are considered accurate under § 226.22(a)(4). Proposed § 226.22(a)(5)–1.ii clarifies that, in that case, a disclosed APR of 9.30 is within the tolerance in § 226.22(a)(5) because it is closer to the actual APR of 9.00% than the 9.40% APR that would be considered accurate under § 226.22(a)(4). Proposed comment 22(a)(5)–1.ii clarifies further that, for purposes of the example, an APR below 8.75 percent (corresponding to the ¼ of one percentage point tolerance for an irregular transaction) or above 9.40 percent (corresponding to the APR that results from the disclosed interest and settlement charges) will not be considered accurate.

Section 226.23 Right of Rescission

23(a) Consumer's Right to Rescind

23(a)(1) Coverage

Section 226.23(a)(1), which implements TILA Section 125(a), provides that in a credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind the transaction, except for transactions exempted under § 226.23(f). 15 U.S.C. 1635(a). Footnote 47 to § 226.23(a)(1) currently provides that for purposes of rescission, the addition to an existing obligation of a security interest in a consumer's principal dwelling is a transaction. The right of rescission applies only to the addition of the security interest and not the existing obligation. When adding a security interest, the creditor must deliver the notice of the right of rescission required under § 226.23(b), but need not deliver new material disclosures. Delivery of the required rescission notice begins the rescission period.

The Board proposes to move the first two sentences of footnote 47 to the text of § 226.23(a)(1) in order to make clear that the addition of a security interest in a consumer's principal dwelling is a rescindable transaction. However, the last two sentences of footnote 47 regarding the creditor's obligation to provide a rescission notice would be moved to comment 23(a)(1)–5.

Currently, comment 23(a)(1)–5 states that the addition of a security interest in a consumer's principal dwelling to an existing obligation is rescindable even if the existing obligation is not satisfied and replaced by a new obligation, and even if the existing obligation was previously exempt (because it was credit over $25,000 not secured by real property or a consumer's principal dwelling). The right of rescission applies only to the added security interest, and not to the original obligation. In those situations, only the § 226.23(b) notice need be delivered, not new material disclosures; the rescission period begins to run from the delivery of the notice.

The Board proposes to revise comment 23(a)(1)–5 to reflect changes under proposed § 226.20(a). As discussed in more detail in the section-by-section analysis for proposed § 226.20 above, proposed § 226.20(a)(1) would provide that the addition of new collateral that is real property or a dwelling to an existing legal obligation secured by real property or a dwelling would be a "new transaction" requiring new TILA disclosures. Thus, for example, if a creditor adds a security interest in the consumer's principal dwelling to an existing loan secured by vacant land, then the creditor would have to provide the consumer with new TILA disclosures. Accordingly, comment 23(a)(1)–5 would be revised to state that if the addition of a security interest in the consumer's principal dwelling is a new transaction under § 226.20(a)(1), then the creditor must deliver new material disclosures in addition to the § 226.23(b) notice.

For an existing obligation not secured by real property or a dwelling, proposed § 226.20(a)(2) would provide that new TILA disclosures are required if the existing obligation is satisfied and replaced by a new obligation. Thus, for example, if a creditor satisfies and replaces an existing auto loan and adds a security interest in the consumer's principal dwelling, then the creditor must deliver new material disclosures in addition to the § 226.23(b) notice. Comment 23(a)(5)–1 would be revised to reflect this requirement. As in the current comment, if the existing obligation is not satisfied and replaced, then the creditor need only deliver the § 226.23(b) notice, not new material disclosures.

Finally, comment 23(a)(1)–5 would be revised to clarify that the rescission period will begin to run from the delivery of the rescission notice and, as applicable, the delivery of the material disclosures.

23(a)(2) Exercise of the Right

Background

TILA permits a consumer to assert rescission against the creditor or any assignee of the loan obligation. TILA Sections 125(a), 131(c); 15 U.S.C. 1635(a), 1641(c). To exercise the right of rescission, the consumer must send notification to the creditor or the creditor's agent designated on the notice of the right of rescission provided by the creditor. TILA Section 125(a); 15 U.S.C. 1635(a); § 226.23(a)(2), (b)(iii); comment 23(a)(2)–1. If the creditor fails to provide the consumer with a designated address for sending the notification of rescission, delivering notification to the person or address to which the consumer has been directed to send payments (*i.e.,* the loan servicer) constitutes delivery to the creditor or assignee. *See* comment 23(a)(2)–1.

This regulatory framework for asserting the right to rescind is applicable to most transactions that are rescinded within the initial three-business-day period. TILA and Regulation Z provide that the right of rescission expires three business days after the later of (1) consummation, (2) delivery of the notice of the right to rescind, or (3) delivery of the material disclosures. TILA Section 125(a); 15 U.S.C. 1635(a); § 226.23(a)(3). The creditor may not, directly or through a third party, disburse money, perform services, or deliver materials until the initial three-day rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded. § 226.23(c); comment 23(c)–1. Within the three-business-day period, a consumer normally would send the notice to the creditor or the creditor's agent whose address appears on the rescission notice. The consumer's notification asserting the right against the "creditor" (as defined in § 226.2(a)(17)) in most cases would be effective because, as the Board understands, loans typically are not assigned within the three-business-day period. Under current comment 23(a)(2)–1, if no address were listed for the creditor or the creditor's agent on the rescission notice, the consumer could assert rescission against the creditor by notifying the servicer.

The current regulations, however, do not as readily apply to the exercise the right of rescission during the extended right to rescind. If the creditor fails to deliver the notice of the right to rescind or the material disclosures, the right to rescind expires three years from the date of consummation (or upon the sale or transfer of the property). TILA Section 125(f); 15 U.S.C. 1635(f); § 226.23(a)(3). In the case of certain administrative proceedings, the right to rescind may be further extended. *See id.* The principal problem during the extended rescission period is that the party against which a consumer must assert may no longer be the creditor on the original notice of rescission. TILA Section 125 and § 226.23 set forth the steps the consumer must take to assert that right only with respect to the creditor, yet, during the extended period, a notice to the creditor listed on the original rescission notice may be ineffective. The original creditor may have transferred the obligation shortly after consummation, and, if the loan is securitized, it may have been transferred several times. In addition, the original creditor may no longer exist because of dissolution, bankruptcy, or merger. Moreover, some courts have held that notice is ineffective when the consumer notifies the original creditor and the current servicer, but not the current holder.[63] For practical reasons, a consumer that has an extended right of rescission should assert the right directly against the assignee (the current holder of the loan), because only the assignee is in a position to cancel the transaction.

Unfortunately, consumers have difficulty identifying the assignee that currently holds their loan. Recognizing this problem, Congress recently amended TILA to help consumers determine who the current owner of their loan is and how to contact the owner.[64] The amendments, which the Board implemented in new § 226.39, require an assignee to provide its name and contact information to the consumer within 30 days of acquiring the loan. Consumers can also obtain this information under TILA Section 131(f)(2), which requires loan servicers, upon request from a consumer, to provide the name, address, and telephone number of the owner or master servicer of a loan. 15 U.S.C. 1641(f)(2). The Board is proposing new § 226.41 to require servicers to provide the information the consumer requests under TILA Section 131(f)(2) within a reasonable time. 15 U.S.C. 1641(f)(2).

Despite these improvements, a consumer may still send notification of exercise to the incorrect party because they mistakenly believe that the original creditor or an assignee that once held the loan continues to hold the loan. This reasonable mistake has the most serious consequences for consumers with an extended right that will soon expire; they may lose their right to rescind entirely because of a time lag in the consumer's receipt of information provided pursuant to § 226.41 or § 226.39. Some consumers may never be informed of a certain transfer of their loan because the § 226.39 notice was lost in the mail or the provision of a § 226.39 notice was not required (for instance, when a transferee assigns the loan within 30 days of acquisition). Other consumers may receive a § 226.39 notice identifying the current holder, but fail to read or to keep it, possibly because few consumers will recognize the importance of the information contained in a § 226.39 notice for exercising the right to rescind. Finally, many consumers do not understand the difference between the servicer and the owner of a loan, and may attempt to exercise their right by notifying the servicer.

The Board's Proposal

To address some of these problems, the Board proposes to revise § 226.23(a)(2) and associated commentary. Revised § 226.23(a)(2) would describe: (1) How the consumer must exercise the right of rescission; (2) whom the consumer must notify during the three-business-day period following consummation and after that period has expired (the extended right); and (3) when the creditor or current owner will be deemed to receive the consumer's notice. Comment 23(a)(2)–1 would be divided into three comments and the sentence regarding the start of the time period for the creditor's performance under § 226.23(d)(2) would be moved into new comment 23(a)(2)(ii)(B)–1.

23(a)(2)(i) Provision of Written Notification

Proposed § 226.23(a)(2)(i) contains the same requirements as current § 226.23(a)(2) with respect to the form of

[63] *See, e.g., Roberts* v. *WMC Mortgage Corp.,* 173 Fed. Appx. 575 (9th Cir. 2006) (unpublished); *Meyer* v. *Argent Mortgage Co.,* 379 B.R. 529 (Bankr. E.D. Pa. 2007).

[64] *See* Helping Families Save Their Homes Act, Public Law 111–22, tit. IV, § 404(a), 123 Stat. 1632, 1658 (2009).

and timing for provision of notification. The reference to notices sent by telegram would be removed from the listed methods of transmitting written communication in the regulation and associated commentary as obsolete. No other substantive changes are intended.

23(a)(2)(ii) Party the Consumer Shall Notify

Proposed § 226.23(a)(2)(ii) provides that the party the consumer must notify depends on whether the right of rescission is exercised during the three-business-day period following consummation of the transaction or after expiration of that period. Proposed § 226.23(a)(2)(ii)(A) states that, during the three-business-day period following consummation of the transaction, the consumer must notify the creditor or the creditor's agent designated on the rescission notice. Proposed § 226.23(a)(2)(ii)(A) also includes the guidance from current comment 23(a)(2)–1, that if the notice does not designate the address of the creditor or its agent, the consumer may mail or deliver notification to the servicer, as that term is defined in § 226.36(c)(3). The proposed rule is intended to ensure that the notice is sent to the person who most likely still will own the debt obligation. Generally, loans are not transferred during the three-business-day period following consummation.

Proposed § 226.23(a)(2)(ii)(B) is intended to ensure that consumers can exercise the extended right of rescission if the creditor has transferred the consumer's debt obligation. Under proposed § 226.23(a)(2)(ii)(B), the consumer must mail or deliver notification to the current owner of the debt obligation; however, notice to the servicer would also constitute delivery to the current owner. As discussed above, consumers may have difficulty identifying the current owner of their loan, and may reasonably be confused as to whom they should correspond with about rescinding their loan. In contrast, consumers usually know the identity of their servicer. They may regularly receive statements or other correspondence from their servicer, for example, and many consumers continue to mail monthly mortgage payments to the servicer rather than have these payments automatically debited from their checking or savings account. For these reasons, the Board believes that consumers who exercise the extended right of rescission by notifying their servicers should not be deprived of this important consumer remedy. Moreover, servicers are generally agents of the owner concerning correspondence and other communications to and from the consumer. The Board expects that it would not be unduly burdensome for the servicer to receive a consumer's notification of rescission on behalf of the owner and to inform the owner of the rescission. Proposed comment 23(a)(2)(ii)(B)–1 clarifies that when a consumer provides the servicer with notification of exercise of the extended right of rescission under proposed § 226.23(a)(2)(ii)(B), the period for the creditor's or owner's actions in § 226.23(d)(2) begins to run from the time the servicer receives the consumer's notification.

The Board requests comment on whether the proposal to permit consumers to exercise the right to rescind by notifying the servicer, even if the servicer is not the current owner of the loan, could create any operational or other compliance issues. In particular, the Board seeks comment on whether it is feasible for a servicer to inform the creditor or owner of the debt obligation that the consumer has rescinded on the same day as the servicer receives the consumer's notification, or if the servicer could contractually be responsible for handling the rescission process.

23(a)(3) Rescission Period

Section 226.23(a)(3), which implements TILA Section 125(a), provides that a consumer may exercise the right to rescind until midnight after the third business day following consummation, delivery of all material disclosures, or delivery of the rescission notice, whichever occurs last. 15 U.S.C. 1635(a). If the required notice and material disclosures are not delivered, § 226.23(a)(3) further states that the right of rescission expires three years after the date of consummation of the transaction, upon transfer of all of the consumer's interest in the property, or upon sale of the property, whichever occurs first.

23(a)(3)(i) Three Business Days

Questions have been raised about when the three-business-day rescission period starts if the creditor provided an incorrect or incomplete rescission notice or material disclosures. Some courts have held that the three-business-day rescission period starts when the creditor delivers corrected material disclosures and a new notice of the right to rescind.[65] Some industry representatives, however, maintain that delivery of the corrected material disclosures retroactively triggers the three-business-day rescission period to start when the transaction was consummated. Accordingly, these representatives believe that a new notice of the right to rescind is unnecessary and that the consumer is not entitled to a "second" three-business-day rescission period that starts from delivery of the corrected material disclosures.

To address these questions, the Board is proposing to add a new comment 23(a)(3)(i)–1.iii. The proposed comment explicitly states that the provision of incorrect or incomplete material disclosures or an incorrect or incomplete notice of the right to rescind does not constitute delivery of the material disclosures or notice. The comment explains that, if the creditor originally provided incorrect or incomplete material disclosures, the three-business-day rescission period starts only when the creditor delivers complete, correct material disclosures[66] together with a complete, correct, updated notice of the right to rescind. An updated rescission notice is required because the notice that the creditor previously provided would have contained an incorrect date of expiration of the right, calculated from the later of the date that the transaction was consummated, that the first notice of the right of rescission was provided, or that the incorrect or incomplete material disclosures were provided, instead of the date from which the correct, complete material disclosures were delivered (which had not yet occurred). Of course, if the creditor originally delivered correct, complete material disclosures, but provided a defective notice of the right to rescind, the creditor must deliver to the consumer a complete, correct, updated notice of the right to rescind to commence the three-business-day rescission period.

Proposed comment 23(a)(3)(i)–1.iii also states that the consumer would have the right of rescission until midnight after the third business day following the date of either (1) delivery of the correct and complete material disclosures and correct, complete, updated notice of the right of rescission, or (2) delivery of only the correct, complete, updated notice of the right of rescission, as appropriate. Such delivery

[65] *See, e.g., Smith* v. *Wells Fargo Credit Corp.,* 713 F. Supp. 354 (D. Ariz. 1989); *In re Underwood,* 66 B.R. 656 (Bankr. W.D. Va. 1986).

[66] In its August 2009 Closed-End Proposal, the Board proposed two alternative requirements under § 226.19(a)(2)(iii) for creditors to provide corrected disclosures to the consumer three business days before consummation when a subsequent event makes the final disclosures inaccurate. The Board's final rule under § 226.19(a)(2)(iii) will determine whether a creditor providing corrected material disclosures to comply with this proposed § 226.23(a)(3)(i) must redisclose just the changed terms or all of the terms of the loan.

would also terminate the consumer's extended right to rescind arising from the creditor's original provision of defective material disclosures and/or notice of the right of rescission.

The Board is also proposing to move the final sentence of existing comment 23(a)(3)–1, which clarifies that the consumer must place the rescission notice in the mail or deliver it to the creditor's place of business within the three-business-day period, to proposed § 226.23(a)(2). The Board further proposes to move the remainder of existing comment 23(a)(3)–1, explaining the calculation of the three-business-day period, to proposed comment 23(a)(3)(i)–1.iii. The example of a calculation of the three-business-day period where the notice of right to rescind was delivered after consummation would be omitted because proposed § 226.23(b)(5) requires delivery of the notice of right to rescind prior to consummation.

23(a)(3)(ii) Unexpired Right of Rescission

Implementing TILA Section 125(a), § 226.23(a)(3) currently states that if the material disclosures and rescission notice are not delivered, the right of rescission expires "three years after consummation, upon transfer of all of the consumer's interest in the property, or upon sale of the property, whichever occurs first." 15 U.S.C. 1635(a). Concerns have been raised about whether certain occurrences, such as the consumer's death, filing for bankruptcy, refinancing the loan, or paying off the loan, would terminate an unexpired right to rescind. The Board is proposing to revise § 226.23(a)(3) and associated commentary to clarify these issues. In addition, portions of comment 23(a)(3)–3 would be removed because they simply repeat the regulation. Finally, footnote 48 and comment 23(a)(3)–2 would be moved to the new provision in the proposed § 226.23(a)(5) addressing material disclosures.

Consumer's death. Proposed comment 23(a)(3)(ii)(A)–1 clarifies that the consumer's death terminates an unexpired right to rescind. Through the operation of law, upon the consumer's death all of the consumer's interest in the property is transferred to the consumer's heirs or the estate. Thus, the consumer's death results in a "transfer of all of the consumer's interest in the property," which, as noted above, terminates the right to rescind under § 226.23(a)(3).

Bankruptcy. Proposed comment 23(a)(3)(ii)(A)–1 also clarifies that the consumer's filing for bankruptcy generally does not terminate the unexpired right to rescind, if the consumer still retains an interest in the property after the bankruptcy estate is formed. In a Chapter 7 bankruptcy, most consumers will claim a homestead or other exemption in their residences and, thus, retain an interest in the property. In a Chapter 13 bankruptcy, the consumer retains a right of possession of all property of the bankruptcy estate.[67] Upon confirmation of the Chapter 13 bankruptcy plan, unless otherwise provided, all of the property of the estate is vested in the debtor (consumer).[68] Thus, in those cases, the consumer does not transfer "all of the consumer's interest in the property," so the right to rescind should not expire under § 226.23(a)(3).

Refinancing. Proposed § 226.23(a)(3)(ii)(A) clarifies that a refinancing with a creditor other than the current holder of the obligation terminates the unexpired right to rescind. Refinancing a consumer credit transaction extinguishes the prior creditor's lien on the consumer's property, and terminates the consumer's obligation to repay the creditor under the promissory note through satisfaction of that obligation. These results are the same as those of a "sale of the property," which, as noted above, terminates the right of rescission under TILA and Regulation Z. TILA Section 125(a); 15 U.S.C. 1635(a); § 226.23(a)(3). The Board also believes that continuance of the unexpired right is unnecessary when refinancing with a new creditor, because the results are substantively similar to those of rescission—namely, voiding of the prior creditor's security interest, release of the borrower from the obligation to make payments to that creditor, and return to the creditor of money borrowed.

Under proposed § 226.23(a)(3)(ii)(A), not all refinancings would terminate the extended right to rescind—the right to rescind would still apply to refinancings with the current holder of the credit obligation. The Board is concerned that if all refinancings terminate the extended right to rescind, including refinancings with the same creditor, some creditors may abuse the refinancing process to profit without benefiting the consumer. In particular, some unscrupulous creditors might refinance their own loans on terms that are no better for the consumer than the terms of the prior loan to purposely terminate the consumer's right to rescind the previous loan in which material disclosures or the notice of the right was not delivered. A creditor might do this repeatedly, charging fees and stripping the consumer's equity. Unless these creditors are subject to the consumer remedy of rescission, the Board believes that consumers would not be adequately protected.

Loan pay off. Under proposed § 226.23(a)(3)(ii)(A), paying off a loan would also terminate the unexpired right to rescind. Similar to a refinancing, paying off a consumer credit transaction extinguishes the creditor's prior lien on the consumer's property, and terminates the consumer's obligation to repay the creditor under the promissory note through satisfaction of that obligation. Again, these results are the same as those of a "sale of the property," which, as noted above, terminates the right of rescission under TILA and Regulation Z. TILA Section 125(a); 15 U.S.C. 1635(a); § 226.23(a)(3). The Board also believes that continuance of the unexpired right is unnecessary once a loan is paid off, because paying off the loan largely accomplishes the results of rescission—namely, voiding of the prior creditor's security interest, release of the borrower from the obligation to make payments to that creditor, and return to the creditor of money borrowed.

Proposed comments 23(a)(3)(ii)(A)–2 and –3 regarding the sale or transfer of property are adopted from current comment 23(a)(3)–3. No substantive change is intended. Proposed § 226.23(a)(3)(ii)(B) regarding the extension of the right to rescind in connection with certain administrative proceedings is adopted from the current § 226.23(a)(3). No substantive change is intended. The sentence regarding the extension of the right to rescind in connection with certain administrative proceedings in current comment 23(a)(3)–3 does not appear in a proposed comment because it simply repeats the regulation. No substantive change is intended.

The Board solicits comment on the proposed clarifications that the consumer's death, bankruptcy (when the consumer retains an interest in the securing property), refinancings (with a new creditor), and paying off the loan terminate the unexpired right to rescind.

23(a)(4) Joint owners

Section 226.23(a)(4) provides that when more than one consumer in a transaction has the right to rescind, the exercise of the right by one consumer shall be effective as to all consumers. Comment 23(a)(4)–1 provides that when more than one consumer has the right to rescind a transaction, any one of them may exercise that right and cancel the transaction on behalf of all. For example, if both a husband and wife

[67] 11 U.S.C. 1306(b).

[68] 11 U.S.C. 1327(b).

have the right to rescind a transaction, either spouse acting alone may exercise the right and both are bound by the rescission. The Board proposes technical edits to these provisions. No substantive change is intended.

23(a)(5) Material Disclosures

Background

TILA and Regulation Z provide that a consumer may exercise the right to rescind until midnight of the third business day after the latest of (1) Consummation, (2) delivery of the notice of right to rescind, or (3) delivery of all material disclosures. TILA Section 125(a); 15 U.S.C. 1635(a); § 226.23(a)(3). Thus, the right to rescind does not expire until the notice of right to rescind and the material disclosures are properly delivered. This ensures that consumers are notified of their right to rescind, and that they have the information they need to decide whether to exercise the right. If the rescission notice or the material disclosures are not delivered, a consumer's right to rescind may extend for up to three years from consummation. TILA Section 125(f); 15 U.S.C. 1635(f); § 226.23(a)(3).

TILA defines the following as "material disclosures": (1) The annual percentage rate, (2) the amount of the finance charge, (3) the amount to be financed, (4) the total of payments, (5) the number and amount of payments, (6) the due dates or periods of payments scheduled to repay the indebtedness,
(7) the disclosures required by HOEPA, and (8) the inclusion of a provision in a mortgage that is prohibited by HOEPA, such as negative amortization. TILA Sections 103(u), 129(j); 15 U.S.C. 1602(u), 1639(j).

Congress first added the definition of "material disclosures" to TILA in 1980 so that creditors would be "in a better position to know whether a consumer may properly rescind a transaction."[69] The mortgage market has changed considerably since Congress created this definition of "material disclosures." For example, many creditors now offer nontraditional mortgage products that contain complex or risky features, such as negative amortization or interest-only payments. In the August 2009 Closed-End Proposal, the Board proposed comprehensive revisions to the disclosures for closed-end mortgages that would reflect these changes in the mortgage market. 74 FR 43232, Aug. 26, 2009. The proposed disclosures and revised model forms were developed after extensive consumer testing to determine which credit terms consumers find the most useful in evaluating credit transactions. Based on consumer testing, the August 2009 Closed-End Proposal would add certain new disclosures, such as the interest rate and whether a loan has negative amortization or permits interest-only payments, while making certain other disclosures less prominent, such as the amount financed and the total and number of payments. The proposed rule would also add certain formatting requirements, such as font size and tabular format, to facilitate consumers' understanding of the disclosures.

The Board's Proposal

The Board now proposes to revise the definition of material disclosures to include the information that is critical to consumers in evaluating loan offers, and to remove information that consumers do not find to be important. The proposal is intended to ensure that consumers have the information they need to decide whether to rescind a loan.

Proposed § 226.23(a)(5) would *retain* the following as material disclosures:

- The special HOEPA disclosures and the HOEPA prohibitions referred to in §§ 226.32(c) and (d) and 226.35(b)(2);
- The annual percentage rate;
- The payment summary; and
- The finance charge, renamed the "interest and settlement charges."

The following disclosures would be *added* to the list of material disclosures:

- The loan amount;
- The loan term;
- The loan type (such as an adjustable-rate mortgage);
- The loan features (such as negative amortization);
- The total settlement charges;
- The prepayment penalty; and
- The interest rate.

The following disclosures would be *removed* from the list of material disclosures:

- The amount financed;
- The number of payments; and
- The total of payments.

Proposed comment 23(a)(5)(i)–1 would state that the right to rescind generally does not expire until midnight after the third business day following the latest of (1) consummation; (2) delivery of the notice of right to rescind, as set forth in § 226.23(b); or (3) delivery of all material disclosures, as set forth in § 226.23(a)(5)(i). A creditor must make the material disclosures clearly and conspicuously consistent with the requirements of §§ 226.32(c) and 226.38. The proposed comment would clarify that a creditor may satisfy the requirements for § 226.32(c) by using the Section 32 Loan Model Clauses in Appendix H–16, or providing substantially similar disclosures. In addition, a creditor may satisfy the requirements for proposed § 226.38 by providing the appropriate model form in Appendix H or, for reverse mortgages, Appendix K, or a substantially similar disclosure, which is properly completed with the disclosures required by proposed § 226.38. Failure to provide the non-material disclosures does not affect the right of rescission, although such failure may be a violation subject to the liability provisions of TILA Section 130, or administrative sanctions. 15 U.S.C. 1640.

A material disclosure that is clear and conspicuous but contains a formatting error, such as failure to use bold text, is unlikely to impair a consumer's ability to determine whether to exercise the right to rescind. Thus, proposed comment 23(a)(5)(i)–2 would clarify that failing to satisfy any specific terminology or format requirements set forth in proposed § 226.33 or § 226.37 or in the proposed model forms in Appendix H or Appendix K is not by itself a failure to provide material disclosures. Nonetheless, a creditor must provide the material disclosures clearly and conspicuously, as described in proposed § 226.37 and proposed comments 37(a)–1 and 37(a)(1)–1 and -2.

Legal authority to add disclosures. The Board proposes to revise the definition of material disclosures pursuant to its authority under TILA Section 105. 15 U.S.C. 1604. Although Congress specified in TILA the disclosures that constitute material disclosures, Congress gave the Board broad authority to make adjustments to TILA requirements based on its knowledge and understanding of evolving credit practices and consumer disclosures. Under TILA Section 105(a), the Board may make adjustments to TILA to effectuate the purposes of TILA, to prevent circumvention or evasion, or to facilitate compliance. 15 U.S.C. 1604(a). The purposes of TILA include ensuring the "meaningful disclosure of credit terms" to help consumers avoid the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a).

The Board has considered the purposes for which it may exercise its authority under TILA Section 105(a) and, based on that review, believes that the proposed adjustments are appropriate. The Board believes that the proposed amendments to the definition of "material disclosures" are warranted by the complexity of mortgage products offered today and the number of

[69] S. Rep. No. 368, 98 Cong. 2d Sess. 29, *reprinted in* 1980 U.S.C.A.N.N. 236, 264.

disclosures that are critical to the consumer's evaluation of a loan offer. Some of those features did not exist when Congress created the definition of "material disclosures" in 1980, and the Board does not believe that Congress intended to omit critical mortgage features from the definition. Consumer testing has shown that changes in the mortgage marketplace have made certain disclosures more important to consumers. Defining these disclosures as "material disclosures" would ensure the "meaningful disclosure of credit terms" so that consumers would have the information they need to make informed decisions about whether to rescind the credit transaction. The proposed definition may also prevent circumvention or evasion of the disclosure rules set forth in proposed § 226.38 because creditors would have a greater incentive to ensure that the material disclosures are accurate.

Legal authority to add tolerances. The Board recognizes that increasing the number of material disclosures could increase the possibility of errors resulting in extended rescission rights. Although the creditor must re-disclose any changed terms before consummation, consistent with § 226.17(f), there may still be errors in the final TILA disclosure. To ensure that inconsequential disclosure errors do not result in extended rescission rights, the Board proposes to add tolerances for accuracy of disclosures of the loan amount, the total settlement charges, the prepayment penalty, and the payment summary.

The proposal would retain the existing tolerances for the interest and settlement charges (currently referred to as the "finance charge"). The tolerances for disclosure of the finance charge were created by Congress in 1995,[70] and implemented by the Board in 1996.[71] Thus, TILA and Regulation Z provide a general tolerance for disclosure of the finance charge, a special tolerance for a refinancing with no new advance, and a special tolerance for foreclosures. TILA Sections 106(f)(2), 125(i)(2); 15 U.S.C. 1605(f)(2), 1635(i)(2); § 226.23(g), (h). Under the general rule, the finance charge is considered accurate if the disclosed finance charge is understated by no more than ½ of 1 percent of the face amount of the note or $100, whichever is greater; or is greater than the amount required to be disclosed. There is a greater tolerance for a refinancing with a new creditor if there is no new advance and no consolidation of existing loans. In that case, the finance charge is considered accurate if the disclosed finance charge is understated by no more than 1 percent of the face amount of the note or $100, whichever is greater; or is greater than the amount required to be disclosed. Finally, there is a stricter tolerance after the initiation of foreclosure on the consumer's principal dwelling that secures the credit transaction. In that case, the finance charge is considered accurate if it is understated by no more than $35; or is greater than the amount required to be disclosed. The APR is treated as accurate if the disclosed APR is based on a finance charge that would be considered accurate under the rule.

The Board proposes to model the tolerances for the loan amount, the total settlement charges, the prepayment penalty, and the payment summary on the tolerances provided by Congress in 1995 for the disclosure of the finance charge. As discussed in more detail in the section-by-section analyses below, the loan amount would be considered accurate if the disclosed loan amount is understated by no more than ½ of 1 percent of the face amount of the note or $100, whichever is greater; or is greater than the amount required to be disclosed. In a refinancing with no new advance, the loan amount would be considered accurate if the disclosed loan amount is understated by no more than 1 percent of the face amount of the note or $100, whichever is greater; or is greater than the amount required to be disclosed. The total settlement charges, the prepayment penalty, and the payment summary would be considered accurate if each of the disclosed amounts is understated by no more than $100; or is greater than the amount required to be disclosed.

The Board proposes the new tolerances for the loan amount, the total settlement charges, the prepayment penalty, and the payment summary pursuant to its authority in TILA Section 121(d) to establish tolerances for numerical disclosures that the Board determines are necessary to facilitate compliance with TILA and that are narrow enough to prevent misleading disclosures or disclosures that circumvent the purposes of TILA. 15 U.S.C. 1631(d). The Board does not believe that an extended right of rescission is appropriate if a creditor overstates or slightly understates the loan amount, the total settlement charges, the prepayment penalty, or the payment summary. Creditors would incur litigation and other costs of unwinding transactions based on the extended right of rescission, even though the overstatement or slight understatement of the disclosure was not critical to a consumer's decision to enter into the credit transaction, and in turn, to rescind the transaction. The overstatement or slight understatement is unlikely to influence the consumer's decision of whether to rescind the loan. The Board believes that the proposed tolerances are broad enough to alleviate creditors' compliance concerns regarding minor disclosure errors, and narrow enough to prevent misleading disclosures.

Legal authority to remove disclosures. The proposal would remove the following disclosures from the definition of "material disclosures": the amount financed, the number of payments, and the total of payments. The Board proposes to remove these disclosures from the definition of "material disclosures," under its exception and exemption authority under TILA Section 105. 15 U.S.C. 1604. Although Congress specified in TILA the disclosures that constitute material disclosures that extend rescission, the Board has broad authority to make exceptions to or exemptions from TILA requirements based on its knowledge and understanding of evolving credit practices and consumer disclosures. Under TILA Section 105(a), the Board may make adjustments to TILA to effectuate the purposes of TILA, to prevent circumvention or evasion, or to facilitate compliance. 15 U.S.C. 1604(a). The purposes of TILA include ensuring "meaningful disclosure of credit terms" to help consumers avoid the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a).

TILA Section 105(f) authorizes the Board to exempt any class of transactions from coverage under any part of TILA if the Board determines that coverage under that part does not provide a meaningful benefit to consumers in the form of useful information or protection. 15 U.S.C. 1604(f)(1). The Board is proposing to exempt closed-end credit transactions secured by real property or a dwelling from the part of TILA Section 103(u) that includes the amount financed, the number of payments, and the total of payments as material disclosures. TILA Section 105(f) directs the Board to make the determination of whether coverage of such transactions provides a meaningful benefit to consumers in light of specific factors. 15 U.S.C. 1604(f)(2). These factors are (1) The amount of the loan and whether the disclosures, right of rescission, and other provisions provide a benefit to consumers who are parties to the transactions involving a loan of such amount; (2) the extent to

[70] Public Law No. 104–29 §§ 3 and 8, 109 Stat. 274, 272 and 275 (1995), *codified at* 15 U.S.C. 1605(f)(2) and 1635(i)(2).

[71] 61 FR 49237, Sept. 19, 1996; § 226.23(g), (h).

which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection.

The Board has considered each of these factors and, based on that review, believes that the proposed exceptions and exemptions are appropriate. Mortgage loans generally are the largest credit obligation that most consumers assume. Most of these loans are secured by the consumer's principal residence. Consumer testing of borrowers with varying levels of financial sophistication shows that certain disclosures are not likely to significantly impact a consumer's decision to enter into a mortgage transaction or to exercise the right to rescind. Treating the amount financed and the number and total of payments as "material disclosures" would not provide a meaningful benefit to consumers in the form of useful information or protection. However, retaining these disclosures as material disclosures can increase the cost of credit when failure to provide these disclosures or technical violations due to calculation errors results in an extended right to rescind. Revising the definition of "material disclosures" to reflect the disclosures that are most critical to the consumer's evaluation of credit terms would better ensure that the compliance costs are aligned with disclosure requirements that provide meaningful benefits for consumers.

An analysis of the disclosures retained, added, and removed from the definition of "material disclosures" is set forth below.

23(a)(5)(i) HOEPA and Higher-Priced Mortgage Disclosures and Limitations

In 1994, Congress enacted HOEPA as an amendment to TILA, and added to the definition of "material disclosures" the special disclosures for HOEPA loans.[72] TILA Section 103(u); 15 U.S.C. 102(u). Congress also provided that the inclusion of a provision in a HOEPA loan that is prohibited by HOEPA, such as negative amortization, is deemed to be a failure to deliver the material disclosures. TILA Section 129(j); 15 U.S.C. 1639(j). Currently, the following disclosures for HOEPA loans are material disclosures: (1) A statement that the consumer is not obligated to complete the agreement merely because the consumer has received the disclosures or signed an application; (2) a statement that the consumer could lose the home if the consumer does not meet the loan obligations; (3) the annual percentage rate; (4) the amount of the regular payment and any balloon payment; (5) for variable-rate transactions, a statement that the interest rate and monthly payment may increase, and a disclosure of the maximum monthly payment; and (6) the amount borrowed. TILA Sections 103(u), 129(a); 15 U.S.C. 1602(u), 1639(a); §§ 226.23(a)(3) n.48, 226.32(c). In addition, TILA and Regulation Z prohibit certain loan terms in connection with mortgage loans covered by HOEPA, including some prepayment penalties, balloon payments, negative amortization, and rate increases upon default. TILA Section 129(c)–(g), (j); 15 U.S.C. 1639(c)–(g), (j); §§ 226.23(a)(3) n.48, 226.32(d), 226.35(b)(2). Because of the importance of these disclosures and limitations for high-cost loans, the Board proposes to retain their inclusion in the definition of "material disclosures."

23(a)(5)(i)(A) Loan Amount

Currently, TILA and Regulation Z do not require creditors to disclose the loan amount, except in connection with HOEPA loans. For those loans, creditors must disclose the amount borrowed, which is a material disclosure. TILA Sections 103(u), 129; 15 U.S.C. 1602(u), 1639; §§ 226.23(a)(3) n.48, 226.32(c)(5). The amount borrowed is treated as accurate if it is not more than $100 above or below the amount required to be disclosed. Section 226.32(c)(5). The Board adopted this requirement in December 2001, noting that the disclosure responded to concerns that consumers sometimes seek a modest loan amount only to discover at closing (or after) that the note amount is substantially higher due to fees and insurance premiums that are financed along with the requested loan amount. 66 FR 65611, Dec. 20, 2001.

For non-HOEPA loans, disclosure of the loan amount is not currently required under TILA or Regulation Z. Consumers testing showed, however, that participants could not ascertain the loan amount from other currently-required disclosures, such as the total of payments or the amount financed, which is generally the loan amount less the prepaid finance charge. The August 2009 Closed-End Proposal would require creditors to disclose the loan amount, defined as the principal amount the consumer will borrow as reflected in the loan contract. *See* proposed § 226.38(a)(1). Participants in consumer testing were able to identify the exact loan amount based on this disclosure. 74 FR 43292, Aug. 26, 2009. The Board noted that the loan amount is a core loan term that the consumer should be able to verify readily from the disclosure. Furthermore, the disclosure would alert the consumer to the financing of points and fees.

Accordingly, the Board proposes § 226.23(a)(5)(i)(A) to include the loan amount disclosed under § 226.38(a)(1) in the definition of "material disclosures." This would not significantly increase creditors' burden because this amount presumably is reflected in other documents, such as the promissory note. However, to reduce the likelihood of rescission claims based on minor discrepancies between the disclosure and loan documents that are unlikely to affect a consumer's decision-making, the Board proposes to provide a tolerance for the disclosure of the loan amount.

Tolerances. As discussed above, this proposal would provide a tolerance for the loan amount modeled after the tolerances for the finance charge created by Congress in 1995. Specifically, proposed § 226.23(a)(5)(iii)(A) would provide that the loan amount disclosure would be considered accurate for purposes of rescission if the disclosed loan amount (1) is understated by no more than ½ of 1 percent of the face amount of the note or $100, whichever is greater; or (2) is greater than the amount required to be disclosed. Proposed § 226.23(a)(5)(iii)(B) would provide a special tolerance for a refinancing with a creditor other than the current holder of the debt obligation if there is no new advance and no consolidation of existing loans. Under those circumstances, the loan amount would be considered accurate if the disclosed loan amount (1) is understated by no more than 1 percent of the face amount of the note or $100, whichever is greater; or (2) is greater than the amount required to be disclosed. These tolerances would be consistent with the tolerances applicable to the credit limit disclosed for HELOCs under proposed § 226.15(a)(5)(iii).

Proposed comment 23(a)(5)(iii)–2 would clarify that if there is no new advance of money and no consolidation of existing loans, a refinancing with the current holder who is not the original creditor is subject to the special

[72] HOEPA was contained in the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, 108 Stat. 2160 (1994). Section 152 of HOEPA added a new section 129 to TILA.

tolerance for the loan amount set forth in § 226.23(a)(5)(iii)(B). However, a new transaction under § 226.20(a)(1) with the original creditor who is also the current holder is exempt from rescission under § 226.23(f)(2). Proposed comment 23(a)(5)(iii)–3 would clarify that the term "new advance" would have the same meaning as in proposed § 226.23(f)(2)(ii).

Proposed comment 23(a)(5)(iii)–1 would clarify that if the mortgage is a HOEPA loan, then the tolerance for the amount borrowed as provided in § 226.32(c)(5) would apply to the disclosure of the loan amount for purposes of rescission. For example, the loan amount for a HOEPA loan would be treated as accurate if it is not more than $100 above or below the amount required to be disclosed.

As stated above, the Board proposes to model the tolerance for the loan amount on the tolerances provided by Congress in 1995 for disclosure of the finance charge. However, the Board recognizes that the loan amount is typically smaller than the finance charge. The Board requests comment on whether it should decrease the tolerance in light of the difference between the amount of the finance charge and the loan amount. On the other hand, the Board recognizes that Congress set the $100 in 1995 and a higher dollar figure may be more appropriate at this time. Alternatively, it may be more appropriate to link the dollar figure to an inflation index, such as the Consumer Price Index. Thus, the Board also requests comments on whether the tolerance should be set at a higher dollar figure, or linked to an inflation index, such as the Consumer Price Index. In addition, due to compliance concerns, the Board has not proposed a special tolerance for the loan amount in connection with foreclosures as is provided for the finance charge. The Board solicits comment on this approach. Finally, the Board solicits comment on whether the proposed tolerances should conform to the tolerance for HOEPA loans, which would mean that the loan amount would be treated as accurate if it is not more than $100 above or below the amount required to be disclosed.

23(a)(5)(i)(B) Loan Term

Currently, TILA and Regulation Z do not require disclosure of the loan term, although a consumer could conceivably calculate the loan term from the number of payments and the due dates or periods of payments, which are material disclosures. TILA Sections 103(u), 128(a)(6); 15 U.S.C. 1602(u), 1638(a)(6); §§ 226.18(g), 226.23(a)(3) n.48. The loan term is the period of time to repay the obligation in full. However, consumer testing showed that consumers were not able to readily identify the loan term from the number of payments and due dates, particularly for loans such as adjustable-rate mortgages that have multiple payment levels. 74 FR 43292, Aug. 26, 2009. Accordingly, the August 2009 Closed-End Proposal would require creditors to disclose prominently the loan term, while making the disclosure of the number of payments less prominent than it is under the current regulation. *See* proposed § 226.38(a)(2), (e)(5)(i). The disclosure of the loan term would clearly convey the time period for repayment, which would help consumers evaluate whether the loan is appropriate for them. For example, the loan term would alert consumers to a balloon payment. For a 10-year loan with a balloon payment due in year 10 and an amortization schedule of 30 years, the proposed disclosure would state that the loan term was for 10 years. A consumer considering this loan could then evaluate whether that loan term is appropriate for his or her situation.

Therefore, the Board proposes § 226.23(a)(5)(i)(B) to include the loan term disclosed under § 226.38(a)(2) in the definition of "material disclosures," and, for the reasons discussed below, to remove the number of payments from the definition. Including the loan term as a material disclosure should not expose creditors to increased risk, because it is the same concept as the number of payments, which is currently a material disclosure. Moreover, the loan term is a fixed number that is not dependent on other aspects of the transaction, such as the interest rate. The Board does not believe a tolerance for loan term is necessary, but seeks comment on this issue.

23(a)(5)(i)(C) Loan Type

Currently, § 226.18(f) requires creditors to disclose certain information about variable-rate features, as applicable. Current comment 23(a)(3)–2 provides that the failure to provide information about the APR also includes the failure to inform the consumer of the existence of a variable-rate feature, which is a material disclosure. Consumer testing showed, however, that the current variable-rate disclosure did not clearly convey whether the loan had a fixed- or variable-rate. 74 FR 43292, Aug. 26, 2009. Accordingly, the August 2009 Closed-End Proposal would require the creditor to disclose whether a loan is a fixed-rate, adjustable-rate, or step-rate loan. *See* proposed § 226.38(a)(3)(i). This proposed loan type disclosure would be broader than the current requirement because it would require the creditor to identify a loan that has a fixed or step rate, not just a loan with a variable rate. Consumer testing showed that whether a loan's rate is fixed or adjustable is very important to consumers because they want to know whether their loan rate and payments may increase. The loan type disclosure would alert consumers to the potential for payment shock in an adjustable-rate or step-rate loan.

Accordingly, the Board proposes § 226.23(a)(5)(i)(C) to include the loan type disclosed under § 226.38(a)(3)(i) in the definition of "material disclosures." The Board does not believe that correctly disclosing the loan type would significantly increase creditors' burden because creditors are already required to disclose a variable-rate feature. Moreover, the Board believes the risk of incorrectly disclosing the loan type is low, as it does not depend on mathematical calculations, and is a major feature of the loan agreement, which the creditor can easily identify.

23(a)(5)(i)(D) Loan Features

To inform consumers of risky loan features, the August 2009 Closed-End Proposal would require creditors to disclose the following loan features, as applicable: Step-payments, payment options, negative amortization, or interest-only payments. *See* proposed § 226.38(a)(3)(ii). Through disclosures of the loan features, participants in consumer testing were able to easily identify the type of loan being offered. 74 FR 43292, Aug. 26, 2009. To avoid information overload, the creditor would be limited to disclosure of two of the risky features. The Board noted that disclosures should clearly alert consumers to these features before the consumer becomes obligated on the loan. 74 FR at 43293, Aug. 26, 2009. Therefore, the Board proposes § 226.23(a)(5)(i)(D) to include the loan features disclosed under § 226.38(a)(3)(ii) in the definition of "material disclosures." The loan features would inform consumers about risky features and help consumers decide whether to rescind a loan that might be unsuitable for their situation.

23(a)(5)(i)(E) Total Settlement Charges

Currently, TILA and Regulation Z do not require creditors to disclose the total settlement charges, except as part of the disclosure of the finance charge. The disclosure of settlement charges is governed by RESPA, 12 U.S.C. 2601–2617, and implemented by HUD under Regulation X, 24 CFR Part 3500. Under RESPA and Regulation X, creditors must provide a Good Faith Estimate (GFE) of settlement costs within three business days of application for a mortgage. Creditors must also provide a statement of the final settlement costs at loan closing in the HUD–1 or HUD–1A settlement statement. The GFE is subject to certain tolerances, absent changed circumstances. RESPA and Regulation X do not, however, provide any remedies for a violation of the accuracy requirements.

Consumer testing conducted for the Board consistently showed that participants wanted information about settlement costs on the TILA disclosure to verify the loan costs and to avoid surprise costs at closing. 74 FR 43293, Aug. 26, 2009. Accordingly, the August 2009 Closed-End Proposal would require the creditor to disclose on the final TILA the sum of the final settlement charges as disclosed on the HUD–1 or HUD–1A settlement statement. Alternatively, the creditor could provide the consumer with a copy of the final HUD–1 or HUD–1A settlement statement. *See* proposed § 226.38(a)(4). In either case, the proposal would require the creditor to provide a disclosure of the total settlement charges so that the consumer receives it three days before consummation.

Because of the importance of this disclosure to consumers, the Board proposes § 226.23(a)(5)(i)(E) to include the total settlement charges disclosed under § 226.38(a)(4) in the definition of "material disclosures." Correctly disclosing total settlement charges may impose a burden on creditors, but the Board believes that any burden on creditors would be outweighed by the benefit to consumers of knowing their total final settlement charges before deciding whether to rescind the transaction.

Tolerances. To reduce the likelihood that rescission claims would arise because of minor discrepancies in the disclosure of the total settlement charges, the Board proposes a tolerance in § 226.23(a)(5)(iv). As discussed above, this tolerance would be modeled after the tolerance for the finance charge created by Congress in 1995. Specifically, proposed § 226.23(a)(5)(iv) would provide that the total settlement charges reflected on the TILA disclosure would be considered accurate for purposes of rescission if the total settlement charges disclosed are understated by no more than $100, or are greater than the amount required to be disclosed. These tolerances would be consistent with the proposed tolerances applicable to the disclosure of the total of all one-time fees imposed by the creditor and any third parties for opening a HELOC plan under proposed § 226.15(a)(5)(ii).

The Board proposes to model the tolerance for the disclosure of the total settlement charges on the narrow tolerances provided by Congress in 1995. However, due to compliance concerns, the Board has not proposed a special tolerance for foreclosures as is provided for the finance charge. The Board solicits comment on this approach. Moreover, the Board recognizes that the total settlement charges are typically much smaller than the finance charge, and for this reason has proposed a tolerance based on a dollar figure, rather than a percentage of the loan amount. The Board requests comment on whether it should increase or decrease the dollar figure. The Board also requests comment on whether the tolerance should be linked to an inflation index, such as the Consumer Price Index.

The Board recognizes that Regulation X contains tolerances that limit creditors' and settlement service providers' ability to impose charges at closing that exceed the amounts previously disclosed on the GFE. Regulation X generally provides that certain charges may not exceed the amount disclosed on the GFE, the sum of other charges may not be greater than 10 percent above the sum of the amounts disclosed on the GFE, and certain other charges are permitted to change at settlement. *See* 12 CFR 3500.7(e). However, the Board does not believe that it would be feasible to adopt this approach for the TILA disclosure. First, the Regulation X and Regulation Z tolerances serve different purposes. The Regulation X tolerances determine the extent to which the amounts charged at closing can vary from the amounts disclosed on the GFE. The Regulation Z tolerances would determine the extent to which the total settlement charges actually disclosed can vary from the total settlement charges required to be disclosed. Second, the tolerances differ in the level of detail required for analysis. The Regulation X tolerances require an analysis of specific line items on the HUD–1, whereas the proposed Regulation Z tolerance would be based on the total of all settlement charges as provided on the TILA disclosure. This proposal does not currently contemplate that the creditor or consumer would need to review the itemized list of charges on the HUD–1 to determine whether the disclosure of the total settlement charges is accurate for purposes of rescission under TILA. The Board solicits comment on whether the Regulation X tolerances, or some other tolerance based on a percentage, would be appropriate for the disclosure of the total settlement charges on the TILA disclosure for purposes of rescission.

23(a)(5)(i)(F) Prepayment Penalty

For HOEPA loans and higher-priced mortgage loans, prepayment penalties are subject to certain restrictions, and the inclusion in a HOEPA loan of a prohibited prepayment penalty is deemed a failure to deliver a material disclosure. TILA Section 129(c), (j); 15 U.S.C. 1639(c), (j); §§ 226.23(a)(3) n.48, 226.32(d)(3), 226.35(b)(2). For all other mortgages, TILA and Regulation Z require disclosure of whether or not the consumer may pay a penalty if the obligation is prepaid in full, but this is not a material disclosure. TILA Section 128(a)(11); 15 U.S.C. 1638(a)(11); § 226.18(k)(1).

Consumer testing showed that the current prepayment penalty disclosure does not adequately inform consumers of the existence of a penalty, the magnitude of the penalty, and under what circumstances it would apply. 74 FR 43294, Aug. 26, 2009. Consumers with adjustable-rate mortgages, in particular, need to be informed of the potential payment shock of a prepayment penalty before they accept a loan, as they may be planning to refinance the loan before the rate and payment adjust. The August 2009 Closed-End Proposal would require all mortgage loans to indicate the amount of the maximum prepayment penalty and the circumstances and period in which the creditor may impose the penalty. *See* proposed § 226.38(a)(5). Therefore, the Board proposes § 226.23(a)(5)(i)(F) to include the prepayment penalty disclosed under § 226.38(a)(5) in the definition of "material disclosures."

Tolerances. The Board recognizes that there is some risk of error in disclosing the maximum penalty amount. Moreover, it does not appear consumers need to know the exact amount of the prepayment penalty to make a decision about whether to rescind the loan. To reduce the likelihood that rescission claims would arise because of minor discrepancies in the disclosure of the prepayment penalty, the Board proposes a tolerance in § 226.23(a)(5)(iv). As discussed above, this tolerance would be modeled after the tolerances for the finance charge created by Congress in 1995. Specifically, proposed § 226.23(a)(5)(iv) would provide that the prepayment penalty would be considered accurate for purposes of rescission if the disclosed prepayment penalty: (1) Is understated by no more than $100; or (2) is greater than the amount required to be disclosed.

The Board proposes to model the tolerance for the disclosure of the prepayment penalty on the narrow tolerances provided by Congress in 1995 for disclosure of the finance charge. However, due to compliance concerns, the Board has not proposed a special tolerance for foreclosures as is provided for the finance charge. The Board solicits comment on this approach. Moreover, the Board recognizes that the prepayment penalty is typically much smaller than the finance charge, and for this reason has proposed a tolerance based on a dollar figure, rather than a percentage of the loan amount. The Board requests comment on whether it should increase or decrease the dollar figure. The Board also requests comment on whether the tolerance should be linked to an inflation index, such as the Consumer Price Index.

23(a)(5)(i)(G) Annual Percentage Rate

Currently, TILA and Regulation Z require disclosure of the finance charge expressed as an "annual percentage rate," which is a material disclosure. TILA Sections 103(u), 128(a)(4); 15 U.S.C. 1602(u), 1638(a)(4); §§ 226.18(e), 226.23(a)(3) n.48. Sections 226.23(g) and (h) provide tolerances for disclosure of the APR.

The APR is the only disclosure that combines interest and fees to express the overall cost of the credit in a single number that consumers can use to compare different terms. Consumer testing showed that consumers did not understand the current APR disclosure, and did not use it to evaluate loan offers. 74 FR 43296, Aug. 26, 2009. The August 2009 Closed-End Proposal, however, would improve the disclosure of the APR by making it a more inclusive measure of the cost of credit. *See* proposed § 226.38(b). The proposal would also improve the manner in which the APR is disclosed on the TILA statement by showing the APR in the context of other rates being offered in the market for similar loan products. Accordingly, the Board proposes § 226.23(a)(5)(i)(G) to retain the APR disclosed under § 226.38(b)(1) as a material disclosure.

The Board proposes to move the tolerances applicable to finance charges (now called interest and settlement charges) and the APR in current § 226.23(g) and (h)(2) to proposed § 226.23(a)(5)(ii) and to make technical revisions. Specifically, proposed § 226.23(a)(5)(ii) would provide a general tolerance for disclosure of the interest and settlement charges and the APR, a special tolerance for a refinancing with no new advance, and a special tolerance for foreclosures. Under the general rule, the interest and settlement charges and the APR would be considered accurate if the disclosed interest and settlement charges are understated by no more than ½ of 1 percent of the face amount of the note or $100, whichever is greater; or are greater than the amount required to be disclosed. There is a greater tolerance for a refinancing with a new creditor if there is no new advance and no consolidation of existing loans. In that case, the interest and settlement charges and the APR would be considered accurate if the disclosed interest and settlement charges are understated by no more than 1 percent of the face amount of the note or $100, whichever is greater; or are greater than the amount required to be disclosed. Finally, there is a stricter tolerance after the initiation of foreclosure on the consumer's principal dwelling that secures the credit transaction. In that case, the interest and settlement charges and the APR would be considered accurate if the disclosed interest and settlement charges are understated by no more than $35; or are greater than the amount required to be disclosed. Thus, the APR is treated as accurate if the disclosed APR is based on interest and settlement charges that would be considered accurate under the rule.

23(a)(5)(i)(H) Interest Rate and Payment Summary

Currently, TILA and Regulation Z do not require disclosure of the interest rate, but do require disclosure of the number, amount, and due dates or period of payments scheduled to repay the total of payments, which are material disclosures. TILA Sections 103(u), 128(a)(6); 15 U.S.C. 1602(u), 1638(a)(6); §§ 226.18(g), 226.23(a)(3) n.48. The recent MDIA amendments to TILA also provide that, for "adjustable-rate or payment loans," creditors must disclose examples of the interest rates and payments, including the maximum possible interest rate and payment under the loan's terms. TILA Section 128(b)(2)(C); 15 U.S.C. 1638(b)(2)(C). HOEPA loans are subject to additional payment disclosures, which are material disclosures. TILA Sections 103(u), 129(a)(2)(A); 15 U.S.C. 1602(u), 1639(a)(2)(A); §§ 226.23(a)(3) n.48, 226.32(c)(3), (4). For HOEPA loans, the creditor must disclose the amount of the regular monthly (or other periodic) payment and the amount of any balloon payment. The regular payment disclosed is accurate if it is based on an amount borrowed that is not more than $100 above or below the amount required to be disclosed. Section 226.32(c)(3) and (5). In addition, for HOEPA loans that are variable-rate transactions, the creditor must disclose a statement that the interest rate and monthly payment may increase, and the amount of the maximum monthly payment.

Consumer testing consistently showed that consumers shop for and evaluate a mortgage based on the interest rate and monthly payment. 74 FR 43299, Aug. 26, 2009. Consumer testing also indicated that the current TILA payment schedule is ineffective at communicating to consumers what could happen to their interest rate and payments for an adjustable-rate mortgage. Thus, the August 2009 Closed-End Proposal would add the interest rate to the TILA statement and revise the disclosure of the payment. *See* proposed § 226.38(c). For adjustable-rate or step-rate loans, the proposal would require disclosure of the interest rate and payment at consummation, the maximum interest rate and payment at first adjustment, and the highest possible maximum interest rate and payment. Special disclosures would be required for loans with negatively-amortizing payment options, introductory interest rates, interest-only payments, and balloon payments.

Accordingly, the Board proposes § 226.23(a)(5)(i)(H) to include the interest rate and payment summary disclosed under § 226.38(c) in the definition of "material disclosures." The Board believes that adding the interest rate to the definition of material disclosures would not unduly increase creditor burden, as the interest rate is a key term of the loan agreement. In addition, payment information, particularly for adjustable-rate transactions, is critical to the consumer's evaluation of the affordability of the loan and decision of whether to rescind.

Tolerances. Although creditors may face some risk for incorrectly disclosing payments, the Board believes such risk is outweighed by the benefit to consumers of knowing the payment or payments due over the life of the loan. However, to mitigate the risk that insignificant errors in the payment disclosures would result in an extended right to rescind, the Board proposes a tolerance for the payments. As discussed above, this tolerance would be modeled after the tolerance for the finance charge created by Congress in 1995. Specifically, proposed § 226.23(a)(5)(iv) would provide that the payment summary would be considered accurate for purposes of rescission if the disclosed payment is understated by not more than $100, or is greater than the amount required to be disclosed.

Proposed comment 23(a)(5)(iv)–1 would clarify that if the mortgage is a HOEPA loan, then the tolerance for the regular payment as provided in § 226.32(c)(3) would apply. In a HOEPA loan, there is no tolerance for a payment other than the regular payment. Thus, the disclosure of the regular payment in the payment summary for a HOEPA loan is accurate if it is based on a loan amount that is not more than $100 above or below the amount required to be disclosed. The disclosure of any other payment, such as the maximum monthly payment, is not subject to a tolerance.

The Board proposes to model the tolerance for the disclosure of the payment summary on the narrow tolerances for the finance charge provided by Congress in 1995. However, due to compliance concerns, the Board has not proposed a special tolerance for foreclosures as is provided for the finance charge. The Board solicits comment on this approach. Moreover, the Board recognizes that the payments are typically much smaller than the finance charge, and for this reason has proposed a tolerance based on a dollar figure, rather than a percentage of the loan amount. The Board requests comment on whether it should increase or decrease the dollar figure. The Board also requests comment on whether the tolerance should be linked to an inflation index, such as the Consumer Price Index.

23(a)(5)(i)(I) Finance Charge; Interest and Settlement Charges

TILA Section 106(a) provides that the finance charge is the sum of all charges, payable by the consumer and imposed by the creditor as a condition of or incident to the extension of credit. 15 U.S.C. 105(a). The finance charge is meant to represent the cost of credit in dollar terms, and is used to calculate the APR. Currently, TILA and Regulation Z require disclosure of the finance charge, which is a material disclosure. TILA Sections 103(u), 128(a)(3); 15 U.S.C. 1602(u), 1638(a)(3); §§ 226.18(d), 226.23(a)(3) n.48. In 1995, Congress amended TILA to provide tolerances for disclosure of the finance charge in connection with a rescission claim.[73] Sections 226.23(g) and (h) currently implement these tolerances.

The August 2009 Closed-End Proposal makes the disclosure less prominent, but would revise the disclosure to aid consumer understanding. *See* proposed § 226.38(e)(5)(ii). Consumer testing showed that participants did not understand the term “finance charge,” so the finance charge would be referred to as “interest and settlement charges.” 74 FR 43307, Aug. 26, 2009. The proposal would also require a brief statement that the interest and settlement charges represent part of the total payments amount. Consumer testing suggests that providing the interest and settlement charges in the context of the total payments improves consumers’ comprehension of the total cost of credit.

Therefore, the Board proposes § 226.23(a)(5)(i)(I) to retain the finance charge (interest and settlement charges) disclosed under § 226.38(e)(5)(ii) as a material disclosure. Although consumer testing suggested that the interest and settlement charges disclosure is not as important to consumers as certain other information, the disclosure is still important to understanding the total cost of credit.

The Board proposes to move the tolerances applicable to finance charges (now called interest and settlement charges) and the APR in current § 226.23(g) and (h)(2) to proposed § 226.23(a)(5)(ii) and to make technical revisions. Specifically, proposed § 226.23(a)(5)(ii) would provide a general tolerance for disclosure of the interest and settlement charges and the APR, a special tolerance for a refinancing with no new advance, and a special tolerance for foreclosures. Under the general rule, the interest and settlement charges and the APR would be considered accurate if the disclosed interest and settlement charges are understated by no more than ½ of 1 percent of the face amount of the note or $100, whichever is greater; or are greater than the amount required to be disclosed. There is a greater tolerance for a refinancing with a new creditor if there is no new advance and no consolidation of existing loans. In that case, the interest and settlement charges and the APR would be considered accurate if the disclosed interest and settlement charges are understated by no more than 1 percent of the face amount of the note or $100, whichever is greater; or are greater than the amount required to be disclosed. Finally, there is a stricter tolerance after the initiation of foreclosure on the consumer’s principal dwelling that secures the credit transaction. In that case, the interest and settlement charges and the APR would be considered accurate if the disclosed interest and settlement charges are understated by no more than $35; or are greater than the amount required to be disclosed.

The Board believes these tolerances should mitigate any risk resulting from insignificant disclosure errors related to the finance charges (interest and settlement charges) and the APR. In the August 2009 Closed-End Proposal, the Board proposed to require more third-party charges be included in the finance charge. *See* proposed § 226.4(g). In light of that proposal, the Board solicits comment on whether it should increase the finance charge tolerance, or whether the tolerance should be linked to an inflation index, such as the Consumer Price Index. Disclosures That Would Be Removed from the Definition of “Material Disclosures”

As discussed above, the Board proposes to remove the following disclosures from the definition of “material disclosures:” the amount financed, the total of payments, and the number of payments. Consumer testing has shown that these disclosures are not likely to significantly impact a consumer’s decision to enter into a mortgage transaction. Thus, these disclosures are not likely to influence a consumer’s decision of whether to rescind.

Amount financed. Currently, TILA and Regulation Z require disclosure of the “amount financed,” which is a material disclosure. TILA Sections 103(u), 128(a)(2); 15 U.S.C. 1602(u), 1638(a)(2); §§ 226.18(b), 226.23(a)(3) n.48. The August 2009 Closed-End Proposal would require disclosure of the amount financed, but the disclosure would be less prominent than it is under the current regulation. *See* proposed § 226.38(e)(5)(iii). During consumer testing, participants had difficulty understanding the disclosure of the amount financed and some mistook it for the loan amount (thereby under-estimating the loan amount). 74 FR 43308, Aug. 26, 2009. Consumers stated that they would not be likely to use the disclosure to shop for loans or to understand their loan terms. For these reasons, the Board proposes to remove the amount financed from the definition of “material disclosures.” The Board believes that requiring the loan amount as a material disclosure provides better protection for consumers.

Total of payments. Currently, TILA and Regulation Z require disclosure of the total of payments, which is a material disclosure. TILA Section 103(u), 128(a)(5); 15 U.S.C. 1602(u), 1638(a)(5); §§ 226.18(h), 226.23(a)(3) n.48. The August 2009 Closed-End Proposal would require disclosure of the number and total of payments, but the

[73] Public Law 104–29 §§ 3 and 8, 109 Stat. 274, 272 and 275 (1995), *codified at* 15 U.S.C. 1605(f)(2) and 1635(i)(2).

disclosures would be less prominent than they are under the current regulation. Consumer testing showed that most participants did not find the total of payments to be helpful in evaluating a loan offer. 74 FR 43306, Aug. 26, 2009. For this reason, the Board proposes to remove the total of payments from the definition of "material disclosures."

Number of payments. Currently, TILA and Regulation Z require disclosure of the number of payments, which is a material disclosure. TILA Sections 103(u), 128(a)(6); 15 U.S.C. 1602(u), 1638(a)(6); §§ 226.18(g), 226.23(a)(3) n.48. The August 2009 Closed-End Proposal would require disclosure of the number and total of payments, but the disclosures would be less prominent than they are under the current regulation. Consumer testing showed that most consumers did not use the number and total of payments to evaluate a loan offer. 74 FR 43306, Aug. 26, 2009. Moreover, consumers were not able to readily identify the loan term from the number of payments, particularly for loans that had multiple payment levels. 74 FR 43292, Aug. 26, 2009. For these reasons, the Board proposes to remove the number of payments from the definition of "material disclosures." As discussed above, the Board believes that the addition of the loan term to the definition of "material disclosures" would provide a more meaningful benefit to consumers.

Material Disclosures for Reverse Mortgages

The Board is proposing disclosures for open-end reverse mortgages in § 226.33 that would incorporate many of the disclosures required by proposed § 226.38 for all closed-end mortgages into the reverse mortgage specific disclosures. Proposed § 226.23(a)(5)(i) would contain cross-references to analogous provisions in proposed § 226.33. In addition, as discussed in the section-by-section analysis to § 226.33, some of the proposed new material disclosures for closed-end mortgages do not apply to reverse mortgages and would not be required. Thus, for reverse mortgages, the loan amount, loan term, loan features, and payment summary would not be material disclosures because the disclosures do not apply to, and would not be required for, reverse mortgages. The Board requests comment on whether any of these, or other, disclosures should be material disclosures for reverse mortgages.

23(b) Notice of Right to Rescind

TILA Section 125(a) requires the creditor to disclose clearly and conspicuously the right of rescission to the consumer, and requires the creditor to provide appropriate forms for the consumer to exercise the right to rescind. 15 U.S.C. 1635(a). Section 226.23(b) implements TILA Section 125(a) by setting forth format, content, and timing of delivery standards for the notice of the right to rescind for closed-end mortgage transactions subject to the right. Section 226.23(b) also states that the creditor must deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy if the notice is delivered in electronic form in accordance with the E-Sign Act). The right to rescind generally does not expire until midnight after the third business day following the latest of: (1) Consummation of the transaction, (2) delivery of the rescission notice, or (3) delivery of the material disclosures. TILA Section 125(a); 15 U.S.C. 1635(f); § 226.23(a)(3). If the rescission notice or the material disclosures are not delivered, a consumer's right to rescind may extend for up to three years from consummation. TILA Section 125(f); 15 U.S.C. 1635(f); § 226.23(a)(3).

As part of the 1980 Truth in Lending Simplification and Reform Act, Congress added TILA Section 105(b), requiring the Board to publish model disclosure forms and clauses for common transactions to facilitate creditor compliance with the disclosure obligations and to aid borrowers in understanding the transaction by using readily understandable language. 12 U.S.C. 1615(b). The Board issued its first model forms for the notice of the right to rescind certain closed-end transactions in 1981. 46 FR 20848, Apr. 7, 1981. While the Board has made some changes to the content of the model forms over the years, the current Model Forms H–8 and H–9 in Appendix H to part 226 are generally the same as when they were adopted in 1981.

The Board has been presented with a number of questions and concerns regarding the notice requirements and the model forms. Creditors have raised concerns about the two-copy rule (as described in the section-by-section analysis for 15(b) above), indicating this rule can impose litigation risks when a consumer alleges an extended right to rescind based on the creditor's failure to deliver two copies of the notice. In addition, particular problems with the format, content, and timing of delivery of the notice were highlighted during the Board's outreach and consumer testing conducted for this proposal. To address these problems and concerns, the Board proposes to revise § 226.23(b) and the related commentary. As discussed in more detail below, the Board proposes to revise § 226.23(b) to require creditors to provide one notice of the right to rescind to each consumer entitled to rescind. In addition, the Board proposes to revise significantly the content of the rescission notice by setting forth new mandatory and optional disclosures for the notice. The Board also proposes new format and timing requirements for the notice. Moreover, as discussed in more detail in the section-by-section analysis to Appendix H to part 226, the Board proposes to revise significantly Model Forms H–8 (redesignated as proposed H–8(A)) and H–9, and to add Sample H–8(B).

23(b)(1) Who Receives Notice

TILA Section 125(a) provides that the creditor must notify "any obligor in a transaction subject to this section [of] the rights of the obligor under this section." 15 U.S.C. 1635(a). Section 226.23(b)(1) currently states that the creditor must deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy if the notice is delivered in electronic form in accordance with the E-Sign Act). Obtaining from the consumer a written acknowledgment of receipt of the notice creates a rebuttable presumption of delivery. *See* 15 U.S.C. 1635(c). Comment 23(b)–1 states that in a transaction involving joint owners, both of whom are entitled to rescind, both must receive two copies of the notice of the right of rescission.

The Board originally issued the two-copy rule in 1968, and opted to retain the rule in 1981 to ensure that consumers would be able to use one copy to rescind the loan and retain the other copy with information about their rights. *See* 34 FR 2002, 2010, Feb. 11, 1969; 46 FR 20848, 20884, Apr. 7, 1981. The Board continues to believe that consumers who rescind should be able to keep the written explanation of their rights. However, since 1981, the need for the two-copy rule seems to have diminished while litigation involving the two-copy rule has increased. First, technological advances have made it easier for consumers to retain a copy of the notice of right to rescind, which discloses their rights. Today, consumers generally have greater access to copy machines, scanners, and electronic mail. In consumer testing conducted for the Board, almost all participants said that they would make and keep a copy of the form if they decided to exercise the right. Moreover, the two-copy rule can impose litigation risks when a consumer alleges an extended right to rescind based on the creditor's failure to deliver two copies of the notice.[74] Creditors have expressed concern that it is difficult to prove, if challenged, that the consumer received two copies of the notice at loan closing. Such case-by-case determinations consume judicial resources and increase credit costs. Finally, the two-copy rule would be less necessary because the Board is proposing a model rescission notice that would include a notification of rescission at the bottom, which the consumer could separate and deliver to the creditor while retaining the top portion of the notice containing the description of the consumer's rights.

For these reasons, the Board proposes to revise § 226.23(b)(1) to require creditors to provide one notice of the right to rescind to each consumer entitled to rescind. Comment 23(b)–1 would be revised to delete references to the two-copy requirement. The Board further proposes to remove the references to the E-Sign Act from § 226.23(b)(1) and comment 23(b)–1. The requirement to provide one notice of the right to rescind would be the same for electronic and non-electronic disclosures. Requirements related to the E-Sign Act appear elsewhere in Regulation Z. *See* §§ 226.5(a), 226.17(a), 226.31(b).

23(b)(2) Format of Notice

The current formatting requirements for the notice of the right of rescission appear in § 226.23(b)(1) and are elaborated upon in comment 23(b)–2. Section 226.23(b)(1) states that the notice shall be on a separate document and the required information shall be disclosed clearly and conspicuously. Comment 23(b)–2 provides that the notice must be on a separate piece of paper, but may appear with other information such as the itemization of the amount financed. Comment 23(b)–2 additionally states that the required information must be clear and conspicuous, but no minimum type size or other technical requirements are imposed. Comment 23(b)–2 also refers to the forms in Appendix H to part 226 as models that the creditor may use in giving the notice.

For the reasons discussed in the section-by-section analysis to proposed § 226.15(b), the Board proposes new format rules in § 226.23(b)(2) and related commentary intended to (1) Improve consumers' ability to identify disclosed information more readily; (2) emphasize information that is most important to consumers who wish to exercise the right of rescission; and (3) simplify the organization and structure of required disclosures to reduce complexity and "information overload." The Board proposes these format requirements pursuant to its authority under TILA Section 105(a). 15 U.S.C. 1604(a). Section 105(a) authorizes the Board to make exceptions and adjustments to TILA to effectuate the statute's purpose, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a). The Board believes that the proposed formatting rules described below would facilitate consumers' ability to understand the rescission right and avoid the uninformed use of credit.

Specifically, proposed § 226.23(b)(2) requires the mandatory and optional disclosures to appear on the front side of a one-page document, separate from all other unrelated material, and to be given in a minimum 10-point font. Proposed § 226.23(b)(2) also requires that most of the mandatory disclosures appear in a tabular format. Moreover, the notice would contain a "tear off" section at the bottom of the page, which the consumer could use to exercise the right of rescission. Information unrelated to the mandatory disclosures would not be permitted to appear on the notice.

Proposed comment 23(b)(2)–1 states that the creditor's failure to comply with the format requirements set forth in § 226.23(b)(2) does not by itself constitute a failure to deliver the notice to the consumer. However, to deliver the notice properly for purposes of § 226.23(a)(3), the creditor must provide the mandatory disclosures appearing in the notice clearly and conspicuously, as described in proposed § 226.23(b)(3) and proposed comment 23(b)(3)–1.

Section 226.17(a) generally requires that creditors must make the disclosures required by subpart C regarding closed-end credit (including the rescission notice) in writing in a form that the consumer may keep. Proposed comment 23(b)(2)–2 cross references these requirements in § 226.17(a) to clarify that they apply to the rescission notice.

23(b)(2)(i) Grouped and Segregated

Current § 226.23(b)(1) states that the notice shall be on a separate document. Comment 23(b)–2 provides that the notice must be on a separate piece of paper, but may appear with other information such as the itemization of the amount financed. The Board is concerned that allowing creditors to combine the right of rescission disclosures with other unrelated information, in any format, will diminish the clarity of this key material, potentially cause "information overload," and increase the likelihood that consumers may not read the notice of the right of rescission.

To address these concerns, proposed § 226.23(b)(2)(i) requires the mandatory and any optional rescission disclosures to appear on the front side of a one-page document, separate from any unrelated information. Only information directly related to the mandatory disclosures may be added.

The proposal also requires that certain information be grouped together. Proposed § 226.23(b)(2)(i) requires that disclosure of the security interest, the right to cancel, the refund of fees upon cancellation, the effect of cancellation on the previous loan with the same creditor, how to cancel, and the deadline for cancelling be grouped together in the notice. This information was grouped together in forms the Board tested, and participants generally found the information easy to identify and understand. In addition, this proposed grouping ensures that the information about the consumer's rights would be separated from information at the bottom of the notice, which is designed for the consumer to detach and use to exercise the right of rescission.

23(b)(2)(ii) Specific Format

Current comment 23(b)–2 states that the information disclosed in the notice must be clear and conspicuous, but no minimum type size or other technical requirements are imposed. The Board proposes to impose formatting requirements for this information, to improve consumers' comprehension of the required disclosures. *See* proposed § 226.23(b)(2)(i) and (ii). For example, some information would be required to be in tabular format. The current model forms for the rescission notice provide information in narrative form, which consumer testing participants found difficult to read and understand. However, consumer testing showed that when rescission information was presented in a tabular format, participants found the information

[74] *See, e.g., Smith* v. *Argent Mortgage Co., LLC,* 2009 U.S. App. LEXIS 10702 at *4 (10th Cir. 2009); *American Mortgage Network, Inc.* v. *Shelton,* 486 F.3d 815, 817 (4th Cir. 2007); *Wells Fargo Bank, N.A.* v. *Jaaskelainen,* 407 B.R. 449, 452 (D. Mass. 2009); *Singh* v. *Washington Mutual Bank,* 2009 U.S. Dist. LEXIS 73315 at *3 (N.D. Cal. 2009); *Jobe* v. *Argent Mortgage Co, LLC,* 2009 U.S. Dist. LEXIS 70311 at *1 (M.D. Pa. 2009); *Lippner* v. *Deutsche Bank National Trust Co.,* 544 F. Supp. 2d 695, 697 (N.D. Ill. 2008); *In re Merriman,* 329 B.R. 710, 714 (D. Kan. 2005).

easier to locate and their comprehension of the disclosures improved.

The proposal requires the title of the notice to appear at the top of the notice. Certain mandatory disclosures (*i.e.,* the security interest, the right to cancel, the refund of fees upon cancellation, the effect of cancellation on the previous loan with the same creditor, how to cancel, and the deadline for cancelling in proposed § 226.23(b)(3)(i)–(vi)) must appear beneath the title and be in the form of a table. If the creditor chooses to place in the notice one or both of the optional disclosures (*e.g.,* regarding joint owners and acknowledgement of receipt as permitted in proposed § 226.23(b)(4)), the text must appear after the disclosures required by proposed § 226.23(b)(3)(i)–(vi), but before the portion of the notice that the consumer may use to exercise the right of rescission required by proposed § 226.23(b)(3)(vii). If both optional disclosures are inserted, the statement regarding joint owners must appear before the statement acknowledging receipt. If the creditor chooses to insert an acknowledgement as described in § 226.23(b)(4)(ii), the acknowledgement must appear in a format substantially similar to the format used in proposed Forms H–8(A) or H–9 in Appendix H to part 226. Proposed § 226.23(b)(2)(ii) also requires the mandatory disclosures required under proposed § 226.23(b)(3) and the optional disclosures permitted under § 226.23(b)(4) to be given in a minimum 10-point font.

23(b)(3) Required Content of Notice

TILA Section 125(a) and current § 226.23(b)(1) require that all disclosures of the right to rescind be made clearly and conspicuously. 15 U.S.C. 1635(a). Proposed comment 23(b)(3)–1 clarifies that, to meet the clear and conspicuous standard, disclosures must be in a reasonably understandable form and readily noticeable to the consumer.

Current § 226.23(b)(1) provides the list of disclosures that must appear in the notice: (i) An identification of the transaction; (ii) the retention or acquisition of a security interest in the consumer's principal dwelling; (iii) the consumer's right to rescind the transaction; (iv) how to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's (or it's agent's) place of business; (v) the effects of rescission, as described in current § 226.23(d); and (vi) the date the rescission period expires. Current comment 23(b)–3 states that the notice must include all of the information described in § 226.23(b)(1)(i)–(v). It also provides that the requirement to identify the transaction may be met by providing the date of the transaction. Current Model Forms H–8 and H–9 contain these disclosures. However, consumer testing of the model forms conducted by the Board for this proposal suggests that the amount and complexity of the information currently required to be disclosed in the notice would result in information overload and discourage consumers from reading the notice carefully. The Board also is concerned that certain terminology in the current model forms would impede consumer comprehension of the information.

To address these concerns, the Board proposes to revise the requirements for the notice in new § 226.23(b)(3). Proposed § 226.23(b)(3) removes information required under current § 226.23(b)(1)(i)–(v) that consumer testing indicated is unnecessary for the consumer's comprehension and exercise of the right of rescission. The proposed section also simplifies the information disclosed and presents key information in plain language instead of legalistic terms. The Board proposes these revisions pursuant to its authority in TILA Section 125(a) which provides that creditors shall clearly and conspicuously disclose, in accordance with regulations of the Board, to any obligator in a transaction subject to rescission the rights of the obligor. 15 U.S.C. 1635(a).

Identification of transaction. Current § 226.23(b)(1) requires a creditor to identify the transaction in the rescission notice; current comment 23(b)–3 provides that the requirement that the transaction be identified may be met by providing the date of the transaction. As discussed in more detail in the section-by-section analysis to proposed § 226.15(b)(3)(vii), creditors, servicers and their trade associations noted that creditors might be unable to provide an accurate transaction date when a transaction is conducted by mail or through an escrow agent, as is customary in some states. They noted that in these cases, the date of the transaction cannot be identified accurately before it actually occurs. For example, for a transaction by mail, the creditor cannot know at the time of mailing the rescission notice when the consumer will sign the loan documents (*i.e.,* the date of the transaction).

To address these concerns, the Board proposes not to require that the transaction be identified in the rescission notice for closed-end mortgages. Accordingly, the provision in current comment 23(b)–3 about the date of the transaction satisfying this requirement would be deleted as obsolete. Unlike rescission rights for HELOCs, which may often arise for events occurring after account opening such as increasing the credit limit, the right of rescission for closed-end mortgages normally arises only at consummation. *See* section-by-section analysis to proposed § 226.15(b). In addition, as discussed in more detail in the section-by-section analysis to proposed § 226.23(b)(5), the Board proposes to require creditors to provide the notice of the right to rescind before consummation of the transaction, which would tie the creditor's provision of the rescission notice to consummation of the transaction. *See* proposed § 226.23(b)(5)(i). As a result, the Board believes that consumers are likely to understand from the context in which the notice is given that it is the closed-end mortgage transaction that is giving rise to the right of rescission, even if this is not explicitly stated in the notice.

Addition of a security interest to an existing obligation. Section 226.23(a)(1) describes two situations where a right to rescind generally arises under § 226.23: (1) a credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling; and (2) the addition to an existing obligation of a security interest in a consumer's principal dwelling. Where a security interest is being added to an existing obligation, consumers only have the right to rescind the addition of the security interest and not the existing obligation. See proposed § 226.23(a)(1). The Board believes that the right to rescind typically arises because of a credit transaction, not because the creditor adds a security interest to an existing obligation. Thus, for simplicity, the proposed content of the required disclosures reference the right to cancel "the loan." See proposed § 226.23(b)(3) and proposed Model Form H–8(A). The Board solicits comment, however, on how often the right of rescission arises from the addition to an existing obligation of a security interest in a consumer's principal dwelling, and whether the Board should issue an additional model form to address this situation.

23(b)(3)(i) Security Interest

Current § 226.23(b)(1)(i) requires the creditor to disclose that a security interest will be retained or acquired in the consumer's principal dwelling. Model Forms H–8 and H–9 currently disclose the retention or acquisition of a security interest by stating that "[the] transaction will result in a [mortgage/lien/security interest] [on/in] your home" and "[y]our home is the security for this new transaction," respectively.

The Board's consumer testing of a similar statement regarding a security interest for its August 2009 Closed-End Proposal showed that very few participants understood the statement. 74 FR 43232, Aug. 26, 2009. The Board is concerned that the current language in Model Forms H–8 and H–9 for disclosure of the retention or acquisition of a security interest might not alert consumers that the creditor has the right to take the consumer's home if the consumer defaults. To clarify the significance of the security interest, proposed § 226.23(b)(3)(i) requires a creditor to provide a statement that the consumer could lose his or her home if the consumer does not make payments on the loan. Consumer testing of this plain-language version of the security interest disclosure showed high comprehension by participants.

23(b)(3)(ii) Right to Cancel

Current § 226.23(b)(1)(ii) requires the creditor to disclose the consumer's right to rescind the transaction. In a section entitled "Your Right to Cancel," current Model Forms H–8 and H–9 disclose the right by stating that the consumer has a legal right under Federal law to cancel the transaction, without costs, within three business days from the latest of the date of the transaction (followed by a blank to be completed by the creditor with a date), the date the consumer received the Truth in Lending disclosures, or the date the consumer received the notice of the right to cancel. Consumer testing of language similar to the disclosure in current Model Forms H–8 and H–9 showed that the current description of the right was unnecessarily wordy and too complex for most consumers to understand and use.

In addition, during outreach regarding this proposal, industry representatives remarked that consumers often overlook the disclosure that the right of rescission is provided by Federal law. They also noted that the rule requiring creditors to delay remitting funds to the consumer until the rescission period has ended, also imposed by Federal law, is not a required disclosure and not included in the current model forms. *See* § 226.23(c). Industry representatives indicated that consumers should be notified of this delay in funding so they are not surprised when they must wait for at least three business days after signing the loan documents to receive any funds. To address these problems and concerns, proposed § 226.23(b)(3)(ii) requires two statements: (1) a statement that the consumer has the right under Federal law to cancel the loan on or before the date provided in the notice; and (2) a statement that Federal law prohibits the creditor from making any funds available to the consumer until after the stated date.

23(b)(3)(iii) Fees

Current § 226.23(b)(1)(iv) requires the creditor to disclose the effects of rescission, as described in current § 226.23(d). The disclosure of the effects of rescission in current Model Forms H–8 and H–9 is essentially a restatement of the rescission process set forth in current § 226.23(d)(1)–(3). This information consumes one-third of the space in the model forms, is dense, and uses legalistic phrases. Moreover, in most cases, this information is unnecessary to understand or exercise the right of rescission.

In addition, consumer testing showed that the current model forms do not adequately communicate that the consumer would not be charged a cancellation fee for exercising the right of rescission. Also, the language of the current model forms did not convey that all fees the consumer had paid in connection with obtaining the loan (such as fees charged by the creditor to obtain a credit report and appraisal of the home) would be refunded to the consumer.

To clarify the results of rescission for the consumer, the Board proposes in § 226.23(b)(3)(iii) to require a plain-English statement regarding fees, instead of restating the rescission process in current § 226.23(d). Proposed § 226.23(b)(3)(iii) requires a statement that if the consumer cancels, the creditor will not charge the consumer a cancellation fee and will refund any fees the consumer paid to obtain the loan. Most participants in the Board's consumer testing of these proposed statements understood that the creditor had to return all fees to the consumer, and could not charge fees for rescission. The Board believes that the statement about the refund of fees communicates important information to consumers about their rights if they choose to cancel the transaction. In addition, the Board is concerned that without this disclosure, consumers might believe that they would not be entitled to a refund of fees. This mistaken belief might discourage consumers from exercising the right to rescind where a consumer has paid a significant amount of fees in connection with the loan.

23(b)(3)(iv) New Advance of Money With the Same Creditor Under § 226.23(f)(2)

As discussed in more detail above in the section-by-section analysis to proposed § 226.23(b)(3)(iii), current § 226.23(b)(1)(iv) requires the creditor to disclose the effects of rescission, as described in current § 226.23(d). Currently, Regulation Z provides that a consumer may rescind a refinancing with the same creditor only to the extent of any new advance of money. § 226.23(f)(2); comment 23(f)–4. If the consumer has a valid right to rescind, the creditor must return costs made by the consumer for the refinancing, and take any action necessary to terminate the security interest. § 226.23(d)(2); comment 23(f)–4. Then the consumer must tender back the amount of the new advance. § 226.23(d)(3); comment 23(f)–4. The consumer remains obligated to repay the previous balance under the terms of the previous note. Accordingly, as part of satisfying the requirement to disclose the effects of rescission, current Model Form H–9 includes a statement that if the consumer cancels the new loan, it will not affect the amount the consumer presently owes, and the consumer's home is the security for that amount.

The proposal retains a special disclosure for a new advance of money with the same creditor (as defined in § 226.23(f)(2)). Specifically, proposed § 226.23(b)(3)(iv) requires creditors to disclose that if the consumer cancels the new loan, all of the terms of the previous loan will still apply, the consumer will still owe the creditor the previous balance, and the consumer could lose his or her home if the consumer does not make payments on the previous loan.

Proposed comment 23(b)(3)–6 cross-references § 226.23(f)(2) for an explanation of when there is a new advance of money with the same creditor, as discussed in the section-by-section analysis to proposed § 226.23(f)(2) below. In addition, proposed comment 23(b)(3)–6 clarifies that the transaction is rescindable only to the extent of the new advance and the creditor must provide the consumer with the information in proposed § 226.23(b)(3)(iv). Finally, the proposed comment clarifies that proposed Model Form H–9 is designed for a new advance of money with the same creditor. *See* proposed Model Form H–9 in Appendix H.

23(b)(3)(v) How to Cancel

Current § 226.23(b)(1)(iii) requires the creditor to disclose how to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's (or its agent's) place of business. Current Model Forms H–8 and H–9 contain a statement that the consumer may cancel by notifying the creditor in writing; the form contains a blank for the creditor to insert its name and business address. The current model forms state that if the consumer wishes to cancel by mail or telegram, the notice must be sent "no later than midnight of," followed by a blank for the creditor to insert a date, followed in turn by the language "(or midnight of the third business day following the latest of the three events listed above)." If the consumer wishes to cancel by another means of communication, the notice must be delivered to the creditor's business address listed in the notice "no later than that time."

Current comment 23(a)(2)–1 states that the creditor may designate an agent to receive the rescission notification as long as the agent's name and address appear on the notice. The Board proposes to remove this comment, but insert similar language into proposed § 226.23(b)(3)(v) and proposed comment 23(b)(3)–3. Specifically, proposed § 226.23(b)(3)(v) requires a creditor to disclose the name and address of the creditor or of the agent chosen by the creditor to receive the consumer's notice of rescission and a statement that the consumer may cancel by submitting the form located at the bottom portion of the notice to the address provided. Proposed comment 23(b)(3)–3 states that if a creditor designates an agent to receive the consumer's rescission notice, the creditor may include its name along with the agent's name and address in the notice.

Proposed comment 23(b)(3)–2 clarifies that the creditor may, at its option, in addition to providing a postal address for regular mail, describe other methods the consumer may use to send or deliver written notification of exercise of the right, such as overnight courier, fax, e-mail, or in-person. The Board requires the notice to include a postal address to ensure that an easy and accessible method of sending notification of rescission is provided to all consumers. Nonetheless, the Board would provide flexibility to creditors to provide in the notice additional methods of sending or delivering notification, such as fax and e-mail, which consumers might find convenient.

23(b)(3)(vi) Deadline to Cancel

Current § 226.23(b)(1)(v) requires the creditor to disclose the date on which the rescission period expires. Current Model Forms H–8 and H–9 disclose the expiration date in the section of the notice entitled "How to Cancel." The current model forms provide a blank for the creditor to insert a date followed by the language "(or midnight of the third business day following the latest of the three events listed above)" as the deadline by which the consumer must exercise the right. The three events referenced are the date of the transaction, the date the consumer received the Truth in Lending disclosures, and the date the consumer received the notice of the right to cancel.

For the reasons set forth in the section-by-section analysis to proposed § 226.15(b), the Board proposes to eliminate the statements about the three events and require instead that the creditor provide the calendar date on which the three-business-day period for rescission expires. *See* proposed § 226.23(b)(3)(vi). Many participants in the Board's consumer testing had difficulty using the three events to calculate the deadline for rescission. Moreover, participants in the Board's consumer testing strongly preferred forms that provided a specific date over those that required them to calculate the deadline themselves. Also, parties consulted during the Board's outreach on this proposal stated that the model forms should provide a date certain for the expiration of the three-business-day period.

To ensure that consumers can readily identify the deadline for rescinding a loan, proposed § 226.23(b)(3)(vi) specifies that a creditor must disclose in the rescission notice the calendar date on which the three-business-day rescission period expires. If the creditor cannot provide an accurate calendar date on which the three-business-day rescission period expires, the creditor must provide the calendar date on which it reasonably and in good faith expects the three-business-day period for rescission to expire. If the creditor provides a date in the notice that gives the consumer a longer period within which to rescind than the actual period for rescission, the notice shall be deemed to comply with proposed § 226.23(b)(3)(vi), as long as the creditor permits the consumer to rescind through the end of the date in the notice. If the creditor provides a date in the notice that gives the consumer a shorter period within which to rescind than the actual period for rescission, the creditor shall be deemed to comply with the requirement in proposed § 226.23(b)(3)(vi) if the creditor notifies the consumer that the deadline in the first notice of the right of rescission has changed and provides a second notice to the consumer stating that the consumer's right to rescind expires on a calendar date which is three business days from the date the consumer receives the second notice. Proposed comment 23(b)(3)–4 provides further guidance on these proposed provisions.

The proposed approach is intended to provide consumers with accurate notice of the date on which their right to rescind expires while ensuring that creditors do not face liability for providing a deadline in good faith, that later turns out to be incorrect. The Board recognizes that this approach will further delay access to funds for consumers in certain cases where the creditor must provide a corrected notice. Nonetheless, the Board believes that a corrected notice is appropriate; otherwise consumers would believe based on the first notice that the rescission period ends earlier than the actual date of expiration. The Board, however, solicits comment on the proposed approach and on alternative approaches for addressing situations where the transaction date is not known at the time the rescission notice is provided.

Extended right to rescind. Under TILA and Regulation Z, the right to rescind generally does not expire until midnight after the third business day following the latest of: (1) Consummation of the transaction, (2) delivery of the rescission notice, or (3) delivery of the material disclosures. If the rescission notice or the material disclosures are not delivered, a consumer's right to rescind may extend for up to three years from consummation. TILA Section 125(f); 15 U.S.C. 1635(f); § 226.23(a)(3).

For the reasons set forth in the section-by-section analysis to proposed § 226.15(b), the Board proposes a disclosure regarding the extended right to rescind. Specifically, proposed § 226.23(b)(3)(vi) requires creditors to include a statement that the right to cancel the loan may extend beyond the date disclosed in the notice, and in such a case, a consumer wishing to exercise the right must submit the form located at the bottom of the notice to either the current owner of the loan or the person to whom the consumer sends his or her payments. A creditor may meet these disclosure requirements by placing an asterisk after the sentence disclosing the calendar date on which the right of rescission expires along with a sentence starting with an asterisk that states "In certain circumstances, your right to cancel this loan may extend beyond this date. In that case, you must submit the bottom portion of this notice to either the current owner of your loan or the person to whom you send payments." *See* proposed Model Forms H–8(A) and H–9. Without this statement, the notice would imply that the period for exercising the right is always three business days. In addition, this statement would inform consumers to whom they should submit notification of exercise when they have this extended right to rescind. *See* proposed § 226.23(a)(2). The Board requests comment on the proposed approach to making the consumer aware of the extended right.

23(b)(3)(vii) Form for Consumer's Exercise of Right

Current § 226.23(b)(1)(iii) requires the creditor to disclose how to exercise the right to rescind, and to provide a form that the consumer can use to rescind. Current comment 23(b)–3 permits the creditor to provide a separate form that the consumer may use to exercise the right or to combine that form with the other rescission disclosures, as illustrated by the model forms in Appendix H. Current Model Forms H–8 and H–9 explain a consumer may cancel by using any signed and dated written statement or may use the notice by signing and dating below the statement, "I WISH TO CANCEL." Section 226.23(b)(1) currently requires a creditor to provide two copies of the notice of the right (one copy if delivered in electronic form in accordance with the E–Sign Act) to each consumer entitled to rescind. The current Model Forms contain an instruction to the consumer to keep one copy of the two notices because it contains important information regarding the right of rescission.

For the reasons set forth in the section-by-section analysis to proposed § 226.15(b), proposed § 226.23(b)(2)(ii) and (3)(vii) require creditors to provide a form at the bottom of the notice that the consumer may use to exercise the right to rescind. Current comment 23(b)–3, which permits the creditor to provide a form for exercising the right that is separate from the other rescission disclosures, would be deleted. The creditor would be required to provide two lines on the form for entry of the consumer's name and property address. The creditor would have the option to pre-print on the form the consumer's name and property address. Proposed comment 23(b)(3)–5 elaborates that creditors are not obligated to complete the lines in the form for the consumer's name and property address, but may wish to do so to identify accurately a consumer who uses the form to exercise the right. Proposed comment 23(b)(3)–5 further explains that at its option, a creditor may include the loan number on the form. A creditor would not, however, be allowed to request or to require that the consumer provide the loan number on the form, such as by providing a space for the consumer to fill in the loan number. A consumer might not be able to locate the loan number easily and the Board is concerned that allowing creditors to request a consumer to provide the loan number might mislead the consumer into thinking that he or she must provide the loan number to rescind.

Current Model Forms H–8 and H–9 contain a statement that the consumer may use any signed and dated written statement to exercise the right to rescind. The Board does not propose to retain such a statement on the rescission notice because consumer testing showed that this disclosure is unnecessary. In fact, the Board's consumer testing results suggested that the statement might cause some consumers to believe that they *must* prepare a second statement of cancellation. Moreover, the Board believes it is unlikely that consumers who misplace the form, and later decide to rescind, would remember the statement about preparing their own documents. Based on consumer testing, the Board expects that consumers would use the form provided at the bottom of the notice to exercise the right of rescission. Participants in the Board's testing said that if they lost the form, they would contact the creditor to get another copy.

In addition, current Model Forms H–8 and H–9 contain a statement that the consumer should "keep one copy" of the notice because it contains information regarding the consumer's rescission rights. This statement would be deleted as obsolete. As discussed in the section-by-section analysis to proposed § 226.23(b)(1), the proposal requires creditors to provide only a single copy of the notice to each consumer entitled to rescind. The notice would be revised to permit a consumer to detach the bottom part of the notice to use as a form for exercising the right of rescission while retaining the top portion of the notice containing the explanation of the consumer's rights.

23(b)(4) Optional Content of Notice

Current comment 23(b)–3 states that the notice of the right of rescission may include information related to the required information, such as: a description of the property subject to the security interest; a statement that joint owners may have the right to rescind and that a rescission by one is effective for all; and the name and address of an agent of the creditor to receive notification of rescission.

The Board proposes to continue to allow creditors to include additional information in the rescission notice that is directly related to the required disclosures. Proposed § 226.23(b)(4) sets forth two optional disclosures that are directly related to the mandatory rescission disclosures: (1) a statement that joint owners may have the right to rescind and that a rescission by one owner is effective for all owners; and (2) a statement acknowledging the consumer's receipt of the notice for the consumer to initial and date. In addition, proposed comment 23(b)(4)–1 clarifies that, at the creditor's option, other information directly related to the disclosures required by § 226.23(b)(3) may be included in the notice. For instance, an explanation of the use of pronouns or other references to the parties to the transaction is directly related information that the creditor may choose to add to the notice.

The Board notes, however, that under the proposal, only information directly related to the disclosures may be added to the notice. *See* proposed § 226.23(b)(2)(i). The Board is concerned that allowing creditors to combine disclosures regarding the right of rescission with other unrelated information, in any format, will diminish the clarity of this key material, potentially cause "information overload," and increase the likelihood that consumers may not read the rescission notice.

23(b)(5) Time of Providing Notice

TILA and Regulation Z currently do not specify when the consumer must receive the notice of the right to rescind. Current comment 23(b)–4 states that the creditor need not give the notice to the consumer before consummation of the transaction, but notes, however, that the rescission period will not begin to run until the notice is given to the consumer. As a practical matter, most creditors provide the notice to the consumer along with the Truth in Lending disclosures and other loan documents at loan closing.

The Board proposes to require creditors to provide the notice of the right of rescission before consummation of the transaction. *See* proposed § 226.23(b)(5). The Board proposes this new timing requirement pursuant to the Board's authority under TILA Section 105(a), which authorizes the Board to make exceptions and adjustments to TILA to effectuate the statute's purposes which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a). The Board believes that the proposed timing rule would facilitate consumers' ability to consider the rescission right and avoid the uninformed use of credit.

General timing rule. Except as discussed below, the Board proposes to require creditors generally to provide the notice of the right to rescind before consummation of the transaction. *See* proposed § 226.23(b)(5)(i). TILA and Regulation Z provide that a consumer may exercise the right to rescind until midnight after the third business day following the latest of (1) consummation, (2) delivery of the notice of right to rescind, or (3) delivery of all material disclosures. TILA Section 125(a); 15 U.S.C. 1635(a); § 226.23(a)(3). Creditors typically use the final TILA disclosures to satisfy the requirement to provide material disclosures, and under the August 2009 Closed-End Proposal, the final TILA disclosures must be provided no later than three business days before consummation. Requiring that the rescission notice be given prior to consummation would better ensure that consummation will be the latest of the three events that trigger the three-business-day rescission period (assuming that the TILA disclosures were given no later than three business days prior to consummation). In this way, the three-business-day period would occur directly after consummation of the transaction, a time during which the consumer may be most focused on the transaction and most concerned about the right to rescind it. By tying a creditor's provision of the rescission notice to an event in the lending process of primary importance to the consumer—consummation—this rule might lead consumers to assess the TILA disclosures and other loan documents with a more critical eye.

The proposal should not significantly increase compliance burden because, as noted, currently most creditors provide the rescission notice at loan closing, along with the TILA disclosures. As noted above, under the August 2009 Closed-End Proposal, a creditor would be required to provide the final TILA disclosures no later than three business days prior to consummation. Under this proposal, a creditor could provide the rescission notice with the final TILA disclosures, but would not be required to do so. The creditor could provide the notice at any time before consummation, separately from the final TILA disclosures. The Board solicits comment on whether the rescission notice should be required to be provided with the final TILA disclosures. The Board also invites comment on any compliance or other operational difficulties the proposal might cause.

Comment 23(b)–4 would be removed as inconsistent with the proposed timing requirement. Proposed comment 23(b)(5)–1 clarifies that delivery of the notice after consummation would violate the timing requirement of § 226.23(b)(5)(i), and that the right of rescission does not expire until three business days after the day of late delivery if the notice was complete and correct.

Addition of a security interest. If the right to rescind arises from the addition of a security interest to an existing obligation as described in proposed § 226.23(a)(1), a creditor would be required to provide the rescission notice prior to the addition of the security interest. See proposed § 226.23(b)(5)(ii). Tying a creditor's provision of the rescission notice to the event that gives rise to the right of rescission—the addition of the security interest—might lead consumers to consider more closely the right to rescind. The Board solicits comment on any compliance or other operational difficulties this proposed rule might cause.

23(b)(6) Proper Form of Notice

Current § 226.23(b)(2) states that to satisfy the disclosure requirements of current § 226.23(b)(1), the creditor must provide the appropriate model form in current Appendix H or a substantially similar notice. As discussed above, Appendix H currently provides Model Form H–8 for most rescindable transactions, and Model Form H–9 for a new advance of money by the same creditor with a new advance of money. Before 1995, there was uncertainty about which model form to use. One court held that a creditor could create its own nonstandard notice form, if neither of the Board's two model forms fit the transaction.[75] In 1995, Congress amended TILA to provide that a consumer would not have rescission rights based solely on the form of written notice used by the creditor, if the creditor provided the appropriate form published by the Board, or a comparable written notice, that was properly completed by the creditor, and otherwise complied with all other requirements regarding the notice. TILA Section 125(h); 15 U.S.C. 1635(h). When the Board implemented these amendments to TILA, it revised Model Form H–9 to ease compliance and clarify that it may be used in loan refinancings with the original creditor, without regard to whether the creditor is the holder of the note at the time of the refinancing. As discussed in the section-by-section analysis to § 226.23(b)(3)(iv) above, the Board now proposes to rename Model Form H–9 as "Rescission Model Form (New Advance of Money with the Same Creditor)" to further clarify the purpose of the form and ease compliance.

Consumer advocates have expressed concern about creditors failing to complete the model forms properly. For example, some courts have held that notices with incorrect or omitted dates for the identification of the transaction and the expiration of the right are nevertheless adequate to meet the requirement of delivery of notice of the right to the consumer.[76]

To address these concerns, proposed § 226.23(b)(6) provides that a creditor satisfies § 226.23(b)(3) if it provides the appropriate model form in Appendix H, or a substantially similar notice, which is properly completed with the disclosures required by § 226.23(b)(3). Proposed comment 23(b)(6)–1 explicitly states that a notice is not properly completed if it lacks a calendar date or has an incorrectly calculated calendar date for the expiration of the rescission period. Such a notice would not fulfill the requirement to deliver the notice of the right to rescind. As discussed in the section-by-section analysis to proposed § 226.23(b)(3)(vi) above, however, a creditor who provides a date reasonably and in good faith that later turns out to be incorrect would be deemed to have complied with the requirement to provide the notice if the creditor provides a corrected notice as described in proposed § 226.23(b)(3)(vi) and comment 23(b)–4.

23(c) Delay of Creditor's Performance

Section 226.23(c) provides that, unless the consumer has waived the right of rescission under § 226.23(e), no money may be disbursed other than in escrow, no services may be performed, and no materials delivered until the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded. Comment 23(c)–4 states that a creditor may satisfy itself that the consumer has not rescinded by obtaining a written statement from the consumer that the right has not been exercised. The comment does not address the timing of providing or signing the written statement.

Concerns have been raised that some creditors provide the consumer with a certificate of nonrescission at closing, which is the same time at which the consumer receives the notice of right to rescind and signs all of the closing documents. In some cases, the consumer

[75] *See, e.g., In re Porter,* 961 F.2d 1066, 1076 (3d Cir. 1992).

[76] *See, e.g., Melfi* v. *WMC Mortgage Corp.* 568 F.3d 309 (1st Cir. 2009).

mistakenly signs the nonrescission certificate in the rush to complete closing. In other cases, creditors may specifically require or encourage the consumer to sign the nonrescission certificate at closing, rather than after the expiration of the right of rescission. This may cause the consumer to believe that the right to rescind has been waived or the rescission period has expired. During outreach conducted by the Board for this proposal, industry representatives stated that the majority of creditors have abandoned the practice of providing a nonrescission certificate at closing. In addition, the majority of courts to consider this issue have held that having a consumer sign a nonrescission certificate at closing violates the requirement under TILA and Regulation Z that the creditor provide the notice of right to rescind "clearly and conspicuously." [77] TILA Section 125(b); 15 U.S.C. 1635(b); § 226.23(b)(1). On the other hand, some consumers have advised the Board that their creditors provided a nonrescission certificate at closing, which the consumers have signed. Also, a few courts have held that having the consumer sign a nonrescission certificate at closing is permissible under TILA and Regulation Z.[78] The Board is concerned that permitting consumers to sign and date a nonrescission certificate at closing will undermine consumers' understanding of their right to rescind.

To address these concerns, the Board proposes to revise comment 23(c)–4 to state that a creditor may satisfy itself that the consumer has not rescinded by obtaining a written statement from the consumer that the right has not been exercised. The statement must be signed and dated by the consumer only at the end of the three-day period. The Board acknowledges that some creditors and consumers may be inconvenienced by waiting three days after consummation to provide a nonrescission certificate, but believes that this burden is outweighed by the benefit to consumers of a better understanding of the right to rescind.

[77] *See, e.g., Rand Corp.* v. *Moua,* 449 F.3d 842, 847 (8th Cir. 2009) ("Requiring borrowers to sign statements which are contradictory and demonstrably false is a paradigm for confusion."); *Rodash* v. *AIB Mortgage Co.,* 16 F.3d 1142, 1146 (11th Cir. 1994), *abrogated on other grounds by Veale* v. *Citibank,* 85 F.3d 557 (11th Cir. 1996) (holding that the "primary effect" of providing a nonrescission certificate at closing was to confuse the consumer about her right to rescind).

[78] *See, e.g., ContiMortgage Corp.* v. *Delawder,* 2001 Ohio App. LEXIS 3410 at *12 (Ohio Ct. App. July 30, 2001) (holding that "nothing in the statute or administrative regulations expressly prohibits the signing of a post-dated waiver of the right of rescission").

23(d) Effects of Rescission

Background

TILA and Regulation Z provide that the right of rescission expires three business days after the later of (1) consummation, (2) delivery of the notice of the right to rescind, or (3) delivery of the material disclosures. TILA Section 125(a); 15 U.S.C. 1635(a); § 226.23(a)(3). During the initial three-day rescission period, the creditor may not, directly or through a third party, disburse money, perform services, or deliver materials. Section 226.23(c); comment 23(c)–1. If the creditor fails to deliver the notice of the right to rescind or the material disclosures, a consumer's right to rescind may extend for up to three years from the date of consummation. TILA Section 125(f); 15 U.S.C. 1635(f); § 226.23(a)(3).

TILA Section 125(b) and § 226.23(d) set out the process for rescission. 15 U.S.C. 1635(b). The regulation specifies that "[w]hen a consumer rescinds a transaction, the security interest giving rise to the right of rescission becomes void and the consumer shall not be liable for any amount, including any finance charge." Section 226.23(d)(1). The regulation also states that "[w]ithin 20 calendar days after receipt of a notice of rescission, the creditor shall return any money or property that has been given to anyone in connection with the transaction and shall take any action necessary to reflect the termination of the security interest." Section 226.23(d)(2). Finally, the regulation provides that when the creditor has complied with its obligations, "the consumer shall tender the money or property to the creditor * * *." Section 226.23(d)(3).

TILA and Regulation Z allow a court to modify the process for rescission. TILA Section 125(b); 15 U.S.C. 1635(b); § 226.23(d)(4). After passage of TILA in 1968, courts began to use their equitable powers to modify the rescission procedures so that a creditor would be assured of the consumer's valid right to rescind and ability to tender before the creditor was required to refund costs and release its security interest and lien position.[79] In 1980, Congress codified this judicial authority in the Truth in Lending Simplification and Reform Act by providing that the rescission procedures "shall apply except when otherwise ordered by a court." [80] Regulation Z states that "[t]he procedures outlined in paragraphs (d)(2) and (3) of this section may be modified by court order." Section 226.23(d)(4).

[79] *See Williams* v. *Homestake Mortgage Co.,* 968 F.2d 1137, 1140 (11th Cir. 1992) (citing cases from the Fourth, Sixth, Ninth and Tenth Circuits permitting judicial modification prior to Congress enacting the judicial modification provisions of TILA).

Concerns with the Rescission Process

The rescission process is straightforward if the consumer exercises the right to rescind within three business days of consummation. During this three-day period, the creditor is prohibited from disbursing any money or property and, in most cases, the creditor has not yet recorded its lien. Section 226.23(c). Thus, if the creditor receives a rescission notice from the consumer, the creditor simply returns any money paid by the consumer, such as a document preparation fee.

If the consumer exercises the right to rescind after the initial three-day post-consummation period, however, the process is problematic. The parties may not agree that the consumer still has a right to rescind. For example, the creditor may believe that the consumer's right to rescind has expired or that the creditor properly delivered the notice of right to cancel and material disclosures. Typically, the creditor will not release the lien or return interest and fees to the consumer until the consumer establishes that the right to rescind has not expired and that the consumer can tender the amount provided to the consumer. Both consumer advocates and creditors have urged the Board to clarify the operation of the rescission process in the extended right context. Following is a discussion of the issues that arise when the right to rescind is asserted after the initial three-day period, including the effect of the consumer's notice, the creditor's obligations upon receipt of a consumer's notice, judicial modification, and the form of the consumer's tender.

Effect of the consumer's notice. Consumer advocates and creditors have asked the Board to clarify the effect of the provision of the consumer's notice of rescission on the security interest once the initial three-day period has passed. Some consumer advocates maintain that when a consumer sends a notice to the creditor exercising the right to rescind, the creditor's security interest is automatically void. A few courts have held that the security interest is void as soon as the creditor receives the notice of rescission, regardless of the consumer's ability to tender. However, these courts have still

[80] Truth in Lending Simplification and Reform Act, Public Law 96–221, tit. VI, § 612(a)(4), 94 Stat. 168, 172 (1980).

required the consumer to repay the obligation in full.[81]

Industry representatives, on the other hand, state that courts may condition the release of the security interest upon the consumer's tender. Several courts have held that the creditor's receipt of a valid notice of rescission does not automatically void the creditor's security interest and terminate the consumer's liability for charges.[82] In addition, the majority of Federal circuit courts hold that a court may condition the creditor's release of the security interest on proof of the consumer's ability to tender.[83]

Creditor's obligations upon receipt of notice. Consumer advocates and creditors have expressed confusion about the creditor's obligations upon receiving the consumer's notice of rescission once the initial three-day period has passed. Some creditors use the judicial process to resolve rescission issues. For example, some creditors seek a declaratory judgment whether the consumer's right to rescind has expired. Other creditors concede the consumer has a right to rescind, but tender the refunded costs and the release of the lien to the court with a request that the court release the funds and the lien after the consumer tenders. Although these approaches follow the text of the statute, they increase costs for creditors and consumers. Other creditors do not use the judicial process. For example, some creditors notify the consumer that the refunded costs and release of the lien will be held in escrow until the consumer is prepared to tender. If the consumer tenders, the creditor refunds the costs and releases the lien. Although this process saves the parties the time and expense of a court proceeding, concerns have been raised about creditors conditioning rescission on tender.[84] Finally, some creditors do not respond to the notice of rescission, requiring consumers to go to court to enforce their rights. Courts are divided on whether use of this approach violates of TILA.[85]

Judicial modification. As noted above, when the consumer provides a notice of rescission after the initial three-day period, the consumer and creditor typically dispute whether the consumer has a right to rescind. The parties often seek to resolve the issue in court. It appears that most courts determine first whether the consumer's right to rescind has expired. If the consumer's right has not expired, then the court determines the amounts owed by the consumer and creditor, and then the procedures for the consumer to tender.[86] However, a minority of courts have dismissed the case if the consumer does not first establish the ability to tender.[87] Courts may seek to conserve judicial resources in cases where the consumer would not be able to tender any amount. As a practical matter, a court might determine under certain circumstances that a consumer would be unable to tender even after the loan balance is reduced.

Consumer advocates have expressed concern that conditioning the determination of the right to rescind on the consumer's tender can impose a hardship on consumers. Consumers may have trouble obtaining a refinancing for the entire outstanding loan balance, rather than a reduced amount based on the loan balance less any interest, fees or damages. Moreover, consumers often assert the right to rescind in foreclosure or bankruptcy proceedings, when it is difficult for them to obtain a refinancing.

To address these concerns, the Board in 2004 amended the Official Staff Commentary to provide that "[t]he sequence of procedures under § 226.23(d)(2) and (3) or a court's modification of those procedures under § 226.23(d)(4), does not affect a consumer's substantive right to rescind and to have the loan amount adjusted accordingly. Where the consumer's right to rescind is contested by the creditor, a court would normally determine whether the consumer has a right to rescind and determine the amounts owed before establishing the procedures for the parties to tender any money or property." *See* comment 23(d)(4)–1; 69 FR 16769, March 31, 2004. Notwithstanding this comment, some courts have stated that the court may condition its determination of the consumer's rescission claim on proof of the consumer's ability to tender.[88]

Consumer tender. As noted, consumers often assert the right to rescind in foreclosure or bankruptcy proceedings. These consumers may have difficulty tendering because most creditors will not refinance a loan in such circumstances. Consumer advocates report that this problem has worsened due to the drop in home values in the last few years. A consumer may, however, be able to tender in installments or through other means, such as a modification, deed-in-lieu of foreclosure, or short sale of the property. Industry representatives, on the other hand, have expressed concern about consumers tendering less than the full amount due and note that these alternatives are not contained in the statutory provisions. Several courts have permitted consumers to tender in

[81] *See, e.g., Bell* v. *Parkway Mortgage, Inc.,* 309 B.R. 139 (Bankr. E.D. Pa. 2004) (holding that the court cannot modify the automatic voiding of the security interest, but ordering the consumer to file an amended bankruptcy plan to classify the creditor's unsecured claim separately and provide payment in full over the life of the plan); *Williams* v. *BankOne, N.A.,* 291 B.R. 636 (Bankr. E.D. Pa. 2003) (same). *Cf. Williams* v. *Homestake Mortgage Co.,* 968 F.2d 1137, 1140 (11th Cir. 1992) (holding that rescission of the security interest is automatic but may be conditioned on the consumer's tender).

[82] *See, e.g., American Mortgage Network* v. *Shelton,* 486 F.3d 815, 821 (4th Cir. 2007) ("This Court adopts the majority view of reviewing courts that unilateral notification of cancellation does not automatically void the loan contract."); *Yamamoto* v. *Bank of New York,* 329 F.3d 1167, 1172 (9th Cir. 2003) ("[I]t cannot be that the security interest vanishes immediately upon the giving of notice. Otherwise, a borrower could get out from under a secured loan simply by claiming TILA violations, whether or not the lender had actually committed any."); *Large* v. *Conseco Fin. Servicing Corp.,* 292 F.3d 49, 54–55 (1st Cir. 2002) ("The natural reading of [15 U.S.C. 1635(b)] is that the security interest becomes void when the obligor exercises a right to rescind that is available in a particular case, either because the creditor acknowledges that the right of rescission is available, or because the appropriate decision maker has so determined.").

[83] *See American Mortgage Network* v. *Shelton,* 486 F.3d 815, 820 (4th Cir. 2007); *Yamamoto* v. *Bank of New York,* 329 F.3d 1167, 1172 (9th Cir. 2003); *Williams* v. *Homestake Mortgage Co.,* 968 F.2d 1137, 1140 (11th Cir. 1992); *FDIC* v. *Hughes Development Co.,* 938 F.2d 889, 890 (8th Cir. 1991); *Brown* v. *Nat'l Perm. Fed. Sav. and Loan Ass'n,* 683 F.2d 444, 447 (D.C. Cir. 1982); *Rudisell* v. *Fifth Third Bank,* 622 F.2d 243, 254 (6th Cir. 1980).

[84] *Compare Personias* v. *HomeAmerican Credit, Inc.,* 234 F. Supp. 2d 817 (N.D. Ill. 2002) (upholding the creditor's rescission offer conditioned on the consumer's tender), *with Velazquez* v. *HomeAmerican Credit, Inc.,* 254 F. supp. 2d 1043 (N.D. Ill. 2003) (holding that neither TILA nor Regulation Z permitted the creditor to condition rescission on the consumer's tender).

[85] *Compare Garcia* v. *HSBC Bank USA, N.A.,* 2009 U.S. Dist. LEXIS 114299 at *15 (N.D. Ill. 2009) (holding an assignee liable under TILA for failing to respond to a notice of rescission within 20 days), *with Rudisell* v. *Fifth Third Bank,* 622 F.2d 243, 254 (6th Cir. 1980) ("The statute does not say what should happen if the creditor does not tender back the property within ten days as required under the statute due to a good faith belief that the debtor has no right to rescind.").

[86] *See, e.g., Dawson* v. *Thomas,* 411 B.R. 1, 43 (Bankr. D.C. 2008) (determining that the consumer had an extended right to rescind because the creditor failed to deliver the material disclosures and notice of right to rescind, then determining the amount of consumer's tender based on the loan amount less any amounts paid by the consumer, and permitting the consumer to tender after the sale of the house).

[87] *See, e.g., Yamamoto* v. *Bank of New York,* 329 F.3d 1167, 1173 (9th Cir. 2003) (affirming the district court's decision to dismiss a case prior to determination of the merits of the rescission claim because the consumer could not tender).

[88] *See, e.g., Mangindin* v. *Washington Mutual Bank,* 637 F. Supp. 2d 700 (N.D. Cal. 2009) (granting the creditor's motion to dismiss in a rescission claim because the consumer failed to plead the ability to tender); *ING Bank* v. *Korn,* 2009 U.S. Dist. LEXIS 73329 at *4 (W.D. Wash. May 22, 2009) (same).

installments,[89] but other courts have held that a consumer must tender the full amount due in a lump sum.[90] Consumer advocates have urged the Board to address whether a court may modify the consumer's obligation to tender.

The Board's Proposal

To address the problems that arise when the consumer asserts the right to rescind after the initial three-day period has passed and to facilitate compliance, the Board proposes to revise § 226.23(d) to provide two processes for rescission. Proposed § 226.23(d)(1) would apply only if the creditor has not, directly or indirectly through a third party, disbursed money or delivered property, and the consumer's right to rescind has not expired. Generally, this process would apply during the initial three-day waiting period. Rescission in these circumstances is self-effectuating.

Proposed § 226.23(d)(2) would apply in all other cases, when the consumer asserts the right to rescind after the initial three-day period has expired and the loan proceeds have been disbursed or property has been delivered. In these cases, the consumer's ability to rescind depends on certain facts that may be disputed by the parties. Proposed § 226.23(d)(2)(i) would address how the parties may agree to resolve a rescission claim outside of a court proceeding. The Board believes that the parties should have flexibility to resolve a rescission claim. As noted above, some creditors do not respond to a consumer's notice of rescission. Thus, the proposal would require that the creditor provide an acknowledgment of receipt within 20 calendar days after receiving the consumer's notice of rescission and a written statement of whether the creditor will agree to cancel the transaction. The proposal would also set forth a process for the consumer to tender and the creditor to release its security interest.

Proposed § 226.23(d)(2)(ii) would address the effects of rescission if the parties are in a court proceeding that has jurisdiction over the disputed rescission claim. Consistent with the holding of the majority of courts that have addressed this issue, the proposal would require the consumer to tender before the creditor releases its security interest. As in TILA and the current regulation, the court may modify these procedures.

Legal authority. The Board proposes § 226.23(d)(2) pursuant to its authority in TILA Section 105(a). Section 105(a) authorizes the Board to prescribe regulations to effectuate the statute's purposes and facilitate compliance. 15 U.S.C. 1601(a), 1604(a). TILA's purposes include facilitating consumers' ability to compare credit terms and helping consumers avoid the uninformed use of credit. Section 105(a) also authorizes the Board to make adjustments to the statute for any class of transactions as in the judgment of the Board are necessary or proper to effectuate the purposes of the statute, prevent circumvention or evasion of the statute, or facilitate compliance with the statute.

As discussed above, the process for rescission functions well when rescission is asserted within three days of consummation. 15 U.S.C. 1635. The Board believes TILA Section 125 was designed for consumers to use primarily during the initial three-day period. The process set out in TILA Section 125 does not work well, however, after the initial three-day period when the creditor has disbursed funds and perfected its lien, and the consumer's right to rescind may have expired. Most creditors are reluctant to release a lien under these conditions, particularly if the consumer is in default or in bankruptcy and would have difficulty tendering. Thus, when a creditor receives a consumer's notice after the initial three-day period, the rescission process is unclear and courts are frequently called upon to resolve rescission claims.

To address issues that arise when rescission is asserted after the initial three-day period, the Board is proposing rules to effectuate the statutory purpose and facilitate compliance using its authority under TILA Section 105(a). 15 U.S.C. 1604(a). First, if the parties are not in a court proceeding, the proposal would require the creditor to acknowledge receipt of a notice of rescission and would provide a clear process for the parties to resolve the rescission claim. The Board believes that requiring creditors to acknowledge receipt of the consumer's notice of rescission would effectuate the consumer protection purpose of TILA. Currently, it is not clear whether a creditor must take action upon receipt of a consumer's notice because there may be a good faith dispute as to whether the consumer's right to rescind has expired. The proposal would clarify that a creditor must send a written acknowledgement within 20 calendar days of receipt of the notice. In addition, under the proposal, the creditor must provide the consumer with a written statement that indicates whether the creditor will agree to cancel the transaction and, if so, the amount the consumer must tender. This statement should assist the consumer in deciding whether to seek to resolve the matter with the creditor or to take other action, such as initiating a court action. Also, if the creditor agrees to cancel the transaction, under the proposal the creditor must release its security interest upon the consumer's tender of the amount provided in the creditor's written statement. Thus, the proposal would facilitate compliance with, and prevent circumvention of TILA. Consumers would be promptly and clearly informed about the status of their notice of rescission, and better prepared to take appropriate action.

Second, the proposal would adjust the procedures described in TILA Section 125 to ensure a clearer and more equitable process for resolving rescission claims that are raised in court proceedings after the initial three-day period has passed. 15 U.S.C. 1635. The proposal would provide that when the parties are in a court proceeding, the creditor's release of the security interest is not required until the consumer tenders the principal balance less interest and fees, and any damages and costs, as determined by the court. The Board believes that this adjustment for transactions subject to rescission after the initial three-day period has passed would facilitate compliance. The sequence of procedures set forth in TILA Section 125 would seem to require the creditor to release its security interest whether or not the consumer can tender the funds provided to the consumer after the initial three-day period has passed. The Board does not believe that Congress intended for the creditor to lose its status as a secured creditor if the consumer does not return the amount of money provided or the property delivered. Indeed, the majority of courts that have considered the issue condition the creditor's release of the security interest on the consumer's proof of tender. The proposal would provide clear rules regarding the consumer's obligation to tender before the creditor releases its security interest.

23(d)(1) Effects of Rescission prior to the Creditor Disbursing Funds

Proposed § 226.23(d)(1) would apply only if the creditor has not, directly or

[89] *See, e.g., Sterten* v. *OptionOne Mortgage Co.,* 352 B.R. 380 (Bankr. E.D. Pa. 2006) (permitting tender in installments); *Shepeard* v. *Quality Siding & Window Factory, Inc.,* 730 F. Supp. 1295 (D.Del. 1990) (same); *Smith* v. *Capital Roofing,* 622 F. Supp. 191 (S.D. Miss. 1985) (same).

[90] *See, e.g., Bustamante* v. *First Fed. Sav. & Loan Ass'n,* 619 F.2d 360 (5th Cir. 1980) (holding that tender of installments into escrow is not proper tender). *Cf. American Mortgage Network, Inc.* v. *Shelton,* 486 F. 3d 815, 820 n.5 (4th Cir. 2007) ("This Court does not believes that the [consumers'] offer to sell their residence to [the creditor] for an amount determined by a non-independent appraiser constituted 'reasonable value.' ").

indirectly through a third party, disbursed money or delivered property, and the consumer's right to rescind has not expired. The Board believes that rescission is self-effectuating in these circumstances. Accordingly, under proposed § 226.23(d)(1)(i), when a consumer provides a notice of rescission to a creditor, the security interest would become void and the consumer would not be liable for any amount, including any finance charge. Proposed comment 23(d)(1)(i)–1, adopted from current comment 23(d)(1)–1, would emphasize that "[t]he security interest is automatically negated regardless of its status and whether or not it was recorded or perfected."

As in the current regulation, the creditor would be required to return money paid by the consumer and take whatever steps are necessary to terminate its security interest within 20 calendar days after receipt of the consumer's notice. Accordingly, current § 226.23(d)(2), and existing commentary would be retained and re-numbered as proposed § 226.23(d)(1)(ii). Proposed comment 23(d)(1)(ii)–3 is adopted from current comment 23(d)(2)–3 and revised for clarity. The proposed comment would state that the necessary steps include the cancellation of documents creating the security interest, and the filing of release or termination statements in the public record. If a mechanic's or materialman's lien is retained by a subcontractor or supplier of a creditor-contractor, the creditor-contractor must ensure that the termination of that security interest is also reflected. The 20-calendar-day period for the creditor's action refers to the time within which the creditor must begin the process. It does not require all necessary steps to have been completed within that time, but the creditor is responsible for ensuring that the process is completed.

Proposed comment 23(d)(1)(ii)–4 would clarify that the 20-calendar-day period begins to run from the date the creditor *receives* the consumer's notice. The comment would also clarify that, consistent with proposed § 226.23(a)(2)(ii)(A), the creditor is deemed to have received the consumer's notice of rescission if the consumer provides the notice to the creditor or the creditor's agent designated on the notice. Where no designation is provided, the creditor is deemed to have received the notice if the consumer provides it to the servicer.

Finally, current § 226.23(d)(3) and (d)(4) and associated commentary would be deleted to remove references to the consumer's obligations and judicial modification, which are not applicable in the initial three-day rescission period.

23(d)(2) Effects of Rescission After the Creditor Disburses Funds

Proposed § 226.23(d)(2) would apply if the creditor has, directly or indirectly through a third party, disbursed money or delivered property, and the consumer's right to rescind has not expired under § 226.23(a)(3)(ii). Generally, this process would apply after the initial three-day period has expired.

23(d)(2)(i) Effects of Rescission if the Parties Are Not in a Court Proceeding

23(d)(2)(i)(A) Creditor's Acknowledgment of Receipt

Proposed § 226.23(d)(2)(i) would address the effects of rescission if the parties are not in a court proceeding. Proposed comment 23(d)(2)(i)–1 would clarify that the process set forth in § 226.23(d)(2)(i) does not affect the consumer's ability to seek a remedy in court, such as an action to recover damages under section 130 of the act, and/or an action to tender in installments. In addition, a creditor's written statement, as described in § 226.23(d)(2)(i)(B), is not an admission by the creditor that the consumer's claim is a valid exercise of the right to rescind.

As noted above, some creditors do not respond to the consumer's notice of rescission. To address this issue, proposed § 226.23(d)(2)(i)(A) would require that within 20 calendar days after receiving a consumer's notice of rescission, the creditor must mail or deliver to the consumer a written acknowledgment of receipt of the consumer's notice. The acknowledgment must include a written statement of whether the creditor will agree to cancel the transaction.

Proposed comment 23(d)(2)(i)(A)–1 would clarify that the 20-calendar-day period begins to run from the date the creditor *receives* the consumer's notice. The comment would also cross-reference comment 23(a)(2)(ii)(B)–1 to further clarify that the creditor is deemed to have received the consumer's notice of rescission if the consumer provides the notice to the servicer. TILA's legislative history indicates that Congress intended for creditors to promptly respond to a consumer's notice of rescission. Originally, Congress provided the creditor with 10 days to address these matters.[91] As part of the Truth in Lending Simplification and Reform Act of 1980, however, Congress increased this time period from 10 to 20 days.[92] The legislative history states: "This section also increases from 10 to 20 days the time in which the creditor must refund the consumer's money and take possession of property sold after a consumer exercises his right to rescind. This will give creditors a better opportunity to determine whether the right of rescission is available to the consumer and whether it was properly exercised." [93] Nonetheless, the Board recognizes the complexities of evaluating the creditor's course of action after receiving the consumer's notice of rescission, and solicits comments as to whether a period greater than 20 calendar days should be provided to the creditor particularly because the proposal would require the creditor to provide a written statement of whether it will agree to cancel the transaction.

23(d)(2)(i)(B) Creditor's Written Statement

Proposed § 226.23(d)(2)(i)(B) would set forth the requirements for creditors who agree to cancel the transaction. The proposal would state that if the creditor agrees to cancel the transaction, the acknowledgment of receipt must contain a written statement, which provides: (1) As applicable, the amount of money or a description of the property that the creditor will accept as the consumer's tender, (2) a reasonable date by which the consumer may tender, and (3) that within 20 calendar days after receipt of the consumer's tender, the creditor will take whatever steps are necessary to terminate its security interest. Proposed comment 23(d)(2)(i)(B)–1 would clarify that if the creditor disbursed money to the consumer, then the creditor's written statement must state the amount of money that the creditor will accept as the consumer's tender. For example, suppose the principal balance owed at the time the creditor received the consumer's notice of rescission was $165,000, the costs paid directly by the consumer at closing were $8,000, and the consumer made interest payments totaling $20,000 from the date of consummation to the date of the creditor's receipt of the consumer's notice of rescission. The creditor's written statement could provide that the acceptable amount of tender is $137,000, or some amount higher or lower than that amount.

[91] Truth in Lending Act, Public Law 90–321, tit. I, § 125(b), 82 Stat. 146, 153 (1968).

[92] Truth in Lending Simplification and Reform Act, Public Law 96–221, tit. VI, § 612(a)(3), 94 Stat. 168, 175 (1980).

[93] *See* S. Rep. No. 96–368, at 29 (1979), *as reprinted in* 1980 U.S.C.A.N.N. 236, 264.

Proposed comment 23(d)(2)(i)(B)–2 would provide an example that it would be reasonable under most circumstances to require the consumer's tender within 60 days of the creditor mailing or delivering the written statement. The Board seeks to balance the consumer's need for sufficient time to seek a refinancing or other means of securing tender, with the creditor's need to resolve the matter and possibly resume interest charges. The Board seeks comment on whether such a time period should be provided and, if so, whether it should be shorter or longer.

23(d)(2)(i)(C) Consumer's Response

Proposed § 226.23(d)(2)(i)(C) would set forth the requirements for the consumer's actions in response to the creditor's written statement described in § 226.23(d)(2)(i)(B). If the creditor disbursed money to the consumer in connection with the credit transaction, proposed § 226.23(d)(2)(i)(C)(*1*) would provide that the consumer may respond by tendering to the creditor the money described in the written statement by the date stated in the written statement. Currently, Regulation Z requires the consumer to tender money at the creditor's designated place of business. Section 226.23(d)(3). However, the proposal would permit the consumer to tender money at the creditor's place of business, or any reasonable location specified in the creditor's written statement. The Board does not believe that the consumer's tender of money must be limited to the creditor's place of business if tender can be accomplished at another reasonable location, such as a settlement office.

If the creditor delivered property to the consumer, proposed § 226.23(d)(2)(i)(C)(*2*) would provide that the consumer may respond by tendering to the creditor the property described in the written statement by the date stated in the written statement. As provided in TILA and Regulation Z, the proposal would state that where this tender would be impracticable or inequitable, the consumer may tender its reasonable value. TILA Section 125(b); 15 U.S.C. 1635(b); § 226.23(d)(3). Proposed comment 23(d)(2)(i)(C)–1, adopted from current comment 23(d)(3)–2, would clarify that if returning the property would be extremely burdensome to the consumer, the consumer may offer the creditor its reasonable value rather than returning the property itself. For example, if aluminum siding has already been incorporated into the consumer's dwelling, the consumer may pay its reasonable value. As provided in TILA and Regulation Z, the proposal would further provide that at the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. TILA Section 125(b); 15 U.S.C. 1635(b); § 226.23(d)(3). Proposed comment 23(d)(2)(i)(C)–2, adopted from current comment 23(d)(3)–1, would provide an example that if aluminum siding or windows have been delivered to the consumer's home, the consumer may tender them to the creditor by making them available for pick-up at the home, rather than physically returning them to the creditor's premises.

TILA and Regulation Z provide that if the creditor does not take possession of the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation. TILA Section 125(b); 15 U.S.C. 1635(b); § 226.23(d)(3). The Board does not believe that this situation is likely to arise in the context of resolving a claim outside a court proceeding and therefore, is not proposing to include this provision. That is, the Board believes that if the consumer provides the creditor with the amount of money or property described in the written statement by the date requested, it seems unlikely that the creditor would choose not to accept it. The Board seeks comment on this approach.

23(d)(2)(i)(D) Creditor's Security Interest

Proposed § 226.23(d)(2)(i)(D) would require that within 20 calendar days after receipt of the consumer's tender, the creditor must take whatever steps are necessary to terminate its security interest. Proposed comment 23(d)(2)(i)(D)–1 would cross-reference comment 23(d)(1)(ii)–3, described above, regarding reflection of the security interest termination.

23(d)(2)(ii) Effect of Rescission in a Court Proceeding

23(d)(2)(ii)(A) Consumer's Obligation

Proposed § 226.23(d)(2)(ii) would address the effects of rescission if the creditor and consumer are in a court proceeding, and the consumer's right to rescind has not expired as provided in § 226.23(a)(3)(ii). With respect to the validity of the right to rescind, proposed comment 23(d)(2)(ii)–1 would clarify that the procedures set forth in § 226.23(d)(2)(ii) assume that the consumer's right to rescind has not expired as provided in § 226.23(a)(3)(ii). Thus, if the consumer provides a notice of rescission more than three years after consummation of the transaction, then the consumer's right to rescind has expired and these procedures do not apply.

Proposed § 226.23(d)(2)(ii)(A) would set forth the requirements for the consumer's obligation to tender. The consumer would be required to tender after the creditor receives the consumer's valid notice of rescission, but before the creditor releases its security interest. If the creditor disbursed money to the consumer, proposed § 226.23(d)(2)(ii)(A)(*1*) would require the consumer to tender to the creditor the principal balance then owed less any amounts the consumer has given to the creditor or a third party in connection with the transaction. Tender of money may be made at the creditor's designated place of business, or other reasonable location.

Proposed comment 23(d)(2)(ii)(A)–1 would clarify that the consumer must tender to the creditor the principal balance owed at the time the creditor received the consumer's notice of rescission less any amounts the consumer has given to the creditor or a third party in connection with the transaction. For example, suppose the principal balance owed at the time the creditor received the consumer's notice of rescission was $165,000, the costs paid directly by the consumer at closing were $8,000, and the consumer has made interest payments totaling $20,000 from the date of consummation to the date the creditor received the consumer's notice of rescission. The amount of the consumer's tender would be $137,000. This amount may be reduced by any amounts for damages, attorney's fees or costs, as the court may determine. Proposed comments 23(d)(2)(ii)(A)–2 and –3 are adopted from current comments 23(d)(2)–1 and –2 regarding the creditor's obligations to refund money. The comments are revised for clarity; no substantive change is intended.

Proposed comment 23(d)(2)(ii)(A)–4 would clarify that there may be circumstances where the consumer has no obligation to tender and therefore, the creditor's obligations would not be conditioned on the consumer's tender. For example, in the case of a new transaction with the same creditor and a new advance of money, the new transaction is rescindable only to the extent of the new advance. *See* § 226.23(f)(2)(ii). Suppose the amount of the new advance was $3,000, but the costs paid directly by the consumer at closing were $5,000. The creditor would need to provide $2,000 to the consumer. In that case, within 20 calendar days after the creditor's receipt of the consumer's notice of rescission, the creditor would refund the $2,000 and terminate the security interest.

As stated above, if the creditor delivered property to the consumer, proposed § 226.23(d)(2)(ii)(A)(*2*) would require the consumer to tender the property to the creditor, or where this tender would be impracticable or inequitable, tender its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. Proposed comments 23(d)(2)(ii)(A)–5 and –6 would cross-reference comments 23(d)(2)(i)(C)–1 and –2, described above, regarding the reasonable value and location of property. Proposed § 226.23(d)(2)(ii)(A)(*3*) would state that if the creditor does not take possession of the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

23(d)(2)(ii)(B) Creditor's Obligation

Proposed § 226.23(d)(2)(ii)(B) would require that within 20 calendar days after receipt of the consumer's tender, the creditor must take whatever steps are necessary to terminate its security interest. If the consumer tendered property, the creditor must return to the consumer any amounts the consumer has given to the creditor or a third party in connection with the transaction. Proposed comment 23(d)(2)(ii)(B)–1 would cross-reference comment 23(d)(1)(ii)–3, described above, regarding the reflection of the security interest termination.

23(d)(2)(ii)(C) Judicial Modification

As in the current regulation, proposed § 226.23(d)(2)(ii)(C) would recognize that a court has the authority to modify the creditor's or consumer's obligations under the rescission procedures. Existing comment 23(d)(4)–1 would be re-numbered as proposed comment 23(d)(2)(ii)(C)–1, and revised to clarify that the comment is meant to address concerns about conditioning the determination of the rescission claim on proof of the consumer's ability to tender. The comment would clarify, consistent with the holding of the majority of courts, that where the consumer's right to rescind is contested by the creditor, a court would normally determine first whether the consumer's right to rescind has expired, then the amounts owed by the consumer and the creditor, and then the procedures for the consumer to tender any money or property.

Proposed comment 23(d)(2)(ii)(C)–2 would provide examples of ways the court might modify the rescission procedures. To address concerns about whether a court may modify the consumer's obligation to tender, the proposed comment would provide an example that a court may modify the consumer's form or manner of tender, such as by ordering payment in installments or by approving the parties' agreement to an alternative form of tender.

23(e) Consumer's Waiver of Right to Rescind

Background

TILA Section 125(d) provides that the Board may authorize the modification or waiver of any rights created under TILA's rescission provisions, if the Board finds such action necessary to permit homeowners to meet *bona fide* personal financial emergencies. 15 U.S.C. 1635(d). The Board exercised that authority under §§ 226.15(e) and 226.23(e), for open-end and closed-end mortgage transactions, respectively. Those provisions state that to modify or waive the right to rescind, a consumer must give a creditor a dated, written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all the consumers entitled to rescind.[94] Printed forms are prohibited.[95]

Congress also has used the *bona fide* personal financial emergency standard for the consumer's waiver of pre-consummation waiting periods in HOEPA and recently in the MDIA. Sections 226.19(a) and 226.31(c)(1)(iii) implement the waiver provisions under the MDIA and HOEPA, respectively.

Over the years, creditors have asked the Board to clarify the procedures for waiver of rescission rights and to provide additional examples of a *bona fide* personal financial emergency. Currently, the only example of a *bona fide* personal financial emergency is provided in the commentary to the waiver provisions for the pre-consummation waiting periods required by the MDIA and HOEPA. *See* comments 19(a)(3)–1 and 31(c)(1)(iii)–1. The example states that the imminent sale of a consumer's home at foreclosure is a *bona fide* personal financial emergency.

Creditors have expressed concerns that consumers may have other types of *bona fide* personal financial emergencies, but, given the potential liability for failure to comply with rescission rules, creditors are reluctant to accept waivers that do not conform to the foreclosure example provided in the commentary. During the MDIA rulemaking, creditors asked for additional guidance and examples of *bona fide* personal financial emergencies that would allow a consumer to waive the MDIA's pre-consummation waiting periods. Creditors offered several examples, including the need to pay for college tuition, an emergency medical expense, home repairs after a natural disaster, and avoidance of late charges or an interest rate increase on an existing home mortgage. Consumer advocates, by contrast, stated that the definition of a *bona fide* personal financial emergency should be narrowly construed, to avoid routine waivers of the right to rescind. Consumer advocates stated that pre-consummation waiting periods should be waived only in the case of imminent foreclosure, tax, or condemnation sale.

When the Board finalized the MDIA rule, it stated that whether a *bona fide* personal financial emergency exists is determined based on the facts associated with individual circumstances, and that "waivers should not be used routinely to expedite consummation for reasons of convenience." 74 FR 23289, 23296, May 19, 2009. The Board did not adopt new examples or guidance in the final MDIA rule.

The Board's Proposal

The Board proposes to provide additional guidance regarding when a consumer may waive the right to rescind. The proposed revisions clarify the procedure to be used for a waiver. In addition, new examples of a *bona fide* personal financial emergency would be added to the current example of an imminent foreclosure sale. The Board proposes these new examples as non-exclusive illustrations of other *bona fide* personal financial emergencies that may justify a waiver of the right to rescind. The Board also proposes new examples of circumstances that are not *bona fide* personal financial emergencies.

Procedures. Proposed § 226.23(e) and the associated commentary clarify that the consumer may modify or waive the right to rescind if: (1) The creditor delivers to each consumer entitled to rescind the rescission notice required by § 226.23(b), the credit term disclosures required by § 226.38 and, if applicable, the special disclosures required by § 226.32(c) for high-cost mortgage

[94] Waiver of the right to rescind is more common than modification of that right, but a consumer may modify the right to rescind to shorten the rescission period. References in this **SUPPLEMENTARY INFORMATION** and in commentary on §§ 226.15(e) and 226.23(e) to waiver of the right to rescind also refer to modification of that right.

[95] The Board authorized the use of printed waiver forms for certain natural disasters occurring in 1993 and 1994. *See* § 226.23(e)(2)–(4).

transactions under HOEPA; and (2) each consumer entitled to rescind signs and gives the creditor a dated, written statement that describes the *bona fide* personal financial emergency and specifically modifies or waives the right to rescind. Currently, comment 23(e)–1 clarifies that the *bona fide* personal financial emergency must be such that loan proceeds are needed before the rescission period ends. Proposed § 226.23(e) incorporates that requirement into the regulation.

Proposed § 226.23(e) provides that delivery of the disclosures required by § 226.38 and, if applicable, 226.32(c), must occur before a consumer may waive the right to rescind. This change is proposed for clarity and to conform § 226.23(e) with waiver provisions under §§ 226.19(a)(3) and 226.31(c)(1)(iii). Proposed § 226.23(e) also provides that delivery of the notice of the right of rescission required by § 226.23(b) must occur before a consumer may waive the right to rescind. This ensures that consumers are properly informed of the right, so they can make an informed decision whether to waive the right. Other proposed revisions to § 226.23(e) clarify that each consumer entitled to rescind need not sign the same waiver statement; a proposed conforming revision to comment 23(e)–2 is discussed below. Obsolete references in the regulation to the use of printed forms for natural disasters occurring in 1993 and 1994 are deleted.

The Board proposes to revise comment 23(e)–2 to clarify that where multiple consumers are entitled to rescind, the consumers may, but need not, sign the same waiver statement. The Board proposes further to revise a discussion in existing comment 23(e)–2 of waiver by multiple consumers to refer to § 226.2(a)(11), which establishes which natural persons are consumers with the right to rescind. (Disclosure requirements for closed-end credit transactions that involve multiple consumers are discussed above in the section-by-section analysis of proposed § 226.17(d).) In addition, the Board proposes to revise comment 23(e)–2 to conform the comment with proposed § 226.23(e) and for clarity and to redesignate the comment as comment 23(e)–1.

Bona fide personal financial emergency. Proposed comment 23(e)–2 provides additional clarification regarding *bona fide* personal financial emergencies. The proposed comment contains the current guidance under existing comments 19(a)(3)–1 and 31(c)(1)(iii)–1, that whether the conditions for a *bona fide* personal financial emergency are met is determined by the facts surrounding individual circumstances. Proposed comment 23(e)–2 incorporates existing comment 23(e)–1 but omits the last sentence of existing comment 23(e)–1 ("The existence of the consumer's waiver will not, of itself, automatically insulate the creditor from liability for failing to provide the right of rescission."). The Board believes this general statement regarding liability is not helpful in determining what constitutes a *bona fide* personal financial emergency.

To provide more guidance and ensure that waivers do not become routine, proposed comment 23(e)–2 provides that a *bona fide* personal financial emergency is most likely to arise in situations that involve imminent loss of or harm to a dwelling or imminent harm to the health or safety of a natural person. The proposal does not limit a *bona fide* personal financial emergency to situations involving property damage, health, or safety, however. Instead, the proposal is intended to provide creditors with a general standard to use in determining whether a particular circumstance constitutes a *bona fide* personal financial emergency. Other circumstances that are similar to those described in the proposed comment might be *bona fide* personal financial emergencies under the facts presented. The proposal provides, however, that the conditions for a waiver are not met where the consumer's statement is inconsistent with facts known to the creditor.

Proposed comments 23(e)–2.i and –2.ii provide examples of what may or may not constitute a *bona fide* personal financial emergency. Proposed comment 23(e)–2.i provides the following as examples of a *bona fide* personal financial emergency: (1) The imminent sale of the consumer's home at foreclosure; (2) the need to fund immediate repairs to ensure that a dwelling is habitable, such as structural repairs needed due to storm damage; and (3) the imminent need for health care services, such as in-home nursing care for a patient recently discharged from the hospital. Each example assumes that the emergency cannot be addressed unless the loan proceeds are disbursed during the rescission period, consistent with existing comment 23(e)–1 and proposed comment 23(e)–2. Proposed comment 23(e)–2.ii provides the following as examples of what would *not* constitute a *bona fide* personal financial emergency: (1) The consumer's desire to purchase goods or services not needed on an emergency basis, even though the price may increase if purchased after the rescission period ends; and (2) the consumer's desire to invest immediately in a financial product, such as purchasing securities.

In addition, proposed comment 23(e)–2.iii provides an example of a case where the waiver conditions are not met because a waiver statement is inconsistent with facts known to the creditor. The example provides that, where the waiver statement claims that loan proceeds are needed during the rescission period to abate flooding in a consumer's basement but the creditor is aware that there is no flooding, the conditions for waiver are not met. This example is not an exhaustive statement of situations in which a waiver would not be valid. The comment is not intended to impose a duty to investigate consumer claims.

The Board solicits comment regarding the proposed revisions to § 226.23(e) and accompanying commentary. In particular, the Board requests comment on then proposed examples of circumstances that are and are not a *bona fide* personal financial emergency and then proposed an example of a case where the conditions for waiver are not met under the proposal.

23(f) Exempt Transactions

23(f)(2)

Currently, the right of rescission does not apply to a refinancing or consolidation by the same creditor of an extension of credit already secured by the consumer's principal dwelling. TILA Section 125(e)(2); 15 U.S.C. 1635(e)(2); § 226.23(f)(2). The "same creditor" means the original creditor to whom the written agreement was initially made payable. Comment 23(f)–4. The right of rescission applies, however, to the extent the new amount financed exceeds the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing or consolidation.

Definition of "refinancing." Concerns have been raised about the scope of the exemption because the term "refinancing" is not defined and the term "same creditor" needs clarification. Congress added the exemption for a same-creditor refinancing as part of the 1980 Truth in Lending Simplification and Reform Act,[96] but did not define "refinancing" or the "same creditor." Regulation Z contains a definition of "refinancing" for purposes of disclosures required subsequent to consummation under § 226.20(a), but does not state

[96] Public Law 96–221, tit. VI, § 6, 94 Stat. 145, 176 (1980).

whether this definition should be applied for purpose of the exemption from rescission in § 226.23(f). In addition, under new proposed § 226.20(a)(1), a same-creditor refinancing of a mortgage would now be referred to as a "new transaction." This change may make it more difficult for practitioners to determine where to locate a definition of same-creditor "refinancing."

To address this problem, the Board proposes to specifically reference in § 226.23(f)(2) the term "new transaction" that would be used in proposed § 226.20(a)(1). That is, instead of "refinancing or consolidation," proposed § 226.23(f)(2) would reference "a new transaction under § 226.20(a)(1)." The Board believes that these proposed revisions to §§ 226.20(a) and 226.23(f)(2) will clarify the scope of the rescission exemption for consumers and creditors.

Definition of "same creditor." The Board also proposes to revise the definition of the "same creditor" to clarify that the exemption applies to the original creditor who is also the current holder of the debt obligation. Over time, the definition of the "same creditor" as the "original creditor" has become less meaningful as fewer creditors originate and hold mortgage loans. The Board believes that when the exemption for a refinancing by the "same creditor" was written in 1980, Congress likely intended for the exemption to apply to a portfolio lender who originated the existing mortgage with the consumer and retained the risk for the mortgage. Presumably, in that situation, the consumer would have developed some trust in, or at least familiarity with, the practices of the creditor. In addition, the current definition does little to reduce creditors' risk of rescission. During outreach conducted by the Board for this proposal, the Board was informed that few creditors use this exemption because they are not certain that they were the "original creditor" for the transaction. Creditors can incur liability for mistakenly using Model Form H–9 for a new advance of money with the same creditor when they were not the "original creditor."

To address this problem, the Board proposes § 226.23(f)(2)(i) to define the term "same creditor" to mean "the original creditor that is also the current holder of the debt obligation." The proposal would also move the definition of "original creditor" from the commentary to the regulatory text. The Board believes that this proposal would benefit consumers by limiting the exemption to only the creditor who holds the loan's risk and with whom the consumer has an existing relationship. Furthermore, the proposal may ease the compliance burden and litigation risk for creditors by providing clear guidance on the definition of the "same creditor."

Definition of "new advance of money." The Board also proposes to simplify the definition of a "new advance of money." Currently, the right of rescission applies to a same-creditor refinancing to the extent the new amount financed exceeds the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing or consolidation. TILA Section 125(e)(2); 15 U.S.C. 1635(e)(2); § 226.23(f)(2). Proposed § 226.23(f)(2)(ii) would substitute the "loan amount" for the "amount financed." As stated in the August 2009 Closed-End Proposal, the Board believes that this change would simplify the determination of the new advance; no substantive change is intended. Proposed comment 23(f)(2)–1 would cross-reference § 226.38(a)(1) for a definition of the "loan amount." As stated in the August 2009 Closed-End Proposal, proposed § 226.38(a)(1) would define the "loan amount" as the principal amount the consumer will borrow as reflected in the loan contract. The proposal would also clarify in the regulation, rather than in the commentary, that if the new transaction with the same creditor involves a new advance of money, the new transaction is rescindable only to the extent of the new advance.

The proposal contains two changes to the commentary to clarify the meaning of a "new advance." Currently, comment 23(f)–4 states that a new advance does not include amounts attributed solely to the costs of the refinancing, and refers to amounts included under § 226.4(c)(7), such as attorney's fees and title examination and insurance fees, if *bona fide* and reasonable in amount. Under the August 2009 Closed-End Proposal, § 226.4(c)(7) would no longer apply to closed-end mortgages. Thus, proposed comment 23(f)(2)–2 would clarify that a new advance does not includes amounts attributed solely to "any *bona fide* and reasonable" cost of the new transaction. In addition, proposed comment 23(f)(2)–4 would clarify that amounts that are financed to fund an existing or newly-established escrow account do not constitute a new advance. The term "escrow amount" would have the same meaning as in 24 CFR 3500.17.

To address compliance concerns regarding use of the model forms, as discussed in the section-by-section analysis for § 226.23(b)(e)(iv) above, Model Form H–9 would be renamed "Rescission Model Form (New Advance of Money with the Same Creditor)." Proposed comment 23(f)(2)–5, adopted from current comment 23(f)–4, would clarify that Model Form H–9 should be used for a new advance of money with the same creditor. Otherwise, the general rescission notice (Model Form H–8) is the appropriate form for use by creditors.

The proposal also contains a number of revisions to the regulation and commentary to improve clarity, but no substantive change is intended. In particular, the commentary is revised and re-numbered to correspond to the specific exemption.

23(f)(5)

Currently, § 226.23(f)(5) provides that the right of rescission does not apply to "[a] renewal of optional insurance premiums that is not considered a refinancing under § 226.20(a)(5)." Under section 226.20(a)(5), a "refinancing" does not include "[t]he renewal of optional insurance purchased by the consumer and added to an existing transaction, if disclosures relating to the initial purchase were provided as required by this subpart." The Board proposes to move this definition to the text of proposed § 226.23(f)(5). In addition, the Board proposes to treat the renewal of optional debt cancellation coverage and debt suspension coverage the same as the renewal of optional insurance premiums. The Board has recently proposed to revise and update several sections of Regulation Z to extend its provisions to debt cancellation and debt suspension products.[97] Thus, proposed § 226.23(f)(5) would provide that the right of rescission does not apply to "[a] renewal of optional credit insurance premiums, debt cancellation coverage or debt suspension coverage, provided that the disclosures relating to the initial purchase were provided as required under § 226.38(h)."

23(g) and (h)

Section 226.23(g) and (h)(2) currently provide tolerances for disclosure of the finance charge and the APR for purposes of rescission. As discussed in the section-by-section analysis to proposed § 226.23(a)(5), these tolerances would be moved to § 226.23(a)(5)(ii).

Section 226.23(h)(1) currently provides that after the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation, the consumer shall have the

[97] *See, e.g.,* August 2009 Closed-End Proposal, 74 FR 43232, 43278, Aug. 26, 2009 (treating debt suspension coverage in the same manner as debt cancellation coverage for purposes of disclosing the amount borrowed for a HOEPA loan).

right to rescind the transaction if: (1) a mortgage broker fee that should have been included in the finance charge was not included; or (2) the creditor did not provide the properly completed appropriate model form in appendix H of this part, or a substantially similar notice of rescission. The Board proposes to move this provision and associated commentary to proposed § 226.23(g) and make technical revisions. No substantive change is intended.

Section 226.24 Advertising

24(f) Disclosure of Rates and Payments in Advertisements for Credit Secured by a Dwelling

24(f)(3) Disclosure of Payments

The Board is proposing to amend § 226.24(f)(3) to remove an erroneous cross reference to § 226.24(c). Section 226.24(f)(3) imposes certain requirements on advertisements for credit secured by a dwelling that state the amount of any payment.[98] Section 226.24(f)(3)(i) contains the introductory language, "In addition to the requirements of paragraph (c) of this section," before prescribing the applicable requirements. Section 226.24(c), however, imposes certain requirements on advertisements that state a rate of finance charge, not the amount of any payment. Accordingly, proposed § 226.24(f)(3)(i) would omit the inappropriate reference to "paragraph (c) of this section." No substantive change is intended.

Section 226.31 General Rules

Section 226.31 provides general rules that relate to the disclosures for reverse mortgages under § 226.33 and for high-cost mortgages under § 226.32.

31(b) Form of Disclosures

Under § 226.31(b), a creditor may give a consumer the disclosures required by §§ 226.32 and 226.33 in electronic form, as long as the creditor complies with the consumer notice and consent procedures and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E–Sign Act) (15 U.S.C. 7001 *et seq.*). The proposal would revise § 226.31(b) to permit, under certain circumstances, the proposed disclosures required for reverse mortgage under § 226.33(b) (the "Key Questions" document) to be provided to a consumer in electronic form without regard to the requirements of the E–Sign Act.

Current §§ 226.5(a)(1) and 226.17(a)(1) contain similar exceptions to the E–Sign Act's notice and consent requirements for (among others) the application disclosures required by §§ 226.5b and 226.19(b), respectively. The Board also proposed similar exceptions for the "Key Questions" disclosures in the August 2009 Closed-End and HELOC Proposals. *See* 74 FR 43232, 43323, Aug. 26, 2009; 74 FR 43428, 43442, Aug. 26, 2009. The purpose of this exception from the E–Sign Act's notice and consent requirements is to facilitate credit shopping. When proposing the current exceptions, the Board stated its belief that the exceptions would eliminate a potentially significant burden on electronic commerce without increasing the risk of harm to consumers: requiring consumers to follow the notice and consent procedures of the E–Sign Act to access an online application, solicitation, or advertisement is potentially burdensome and could discourage consumers from shopping for credit online; at the same time, there appears to be little, if any, risk that the consumer will be unable to view the disclosures online when they are already able to view the application, solicitation, or advertisement online. 72 FR 63462, Nov. 9, 2007.

This exception would not be extended to the disclosures that would be provided within three business days after application under proposed § 226.33(d)(1) and (d)(3). The credit shopping process takes place primarily when a consumer reviews applications and associated disclosures and decides whether to submit an application. Three business days after the consumer has submitted an application, the consumer may have completed the credit shopping process. Requiring compliance with the E–Sign Act's notice and consent procedures for disclosures at this point would not likely hinder credit shopping, and would ensure that the consumer is able and willing to receive disclosures in electronic form. In addition, compliance with the E–Sign Act for disclosures three business days after application should not be unduly burdensome, because the time between application and three days later should be sufficient for the creditor to carry out the E–Sign Act notice and consent procedures.

31(c) Timing of Disclosure

31(c)(1) Disclosures for Certain Closed-End Home Mortgages

31(c)(1)(iii) Consumer's Waiver of Waiting Period Before Consummation

Background

TILA Section 103(aa) establishes a category of high-cost, closed-end mortgage loans generally referred to as "HOEPA loans". 15 U.S.C. 1602(aa). TILA Section 129(b)(1) provides that a creditors must make special disclosures required for HOEPA loans at least three business days before consummation. 15 U.S.C. 1639(b)(1). The Board implemented that requirement in § 226.31(c)(1).

TILA Section 129(b)(3) provides that the Board may authorize the modification of or waiver of rights provided for HOEPA loans if the Board finds such action necessary to permit homeowners to meet *bona fide* personal financial emergencies. 15 U.S.C. 1639(b)(3). The Board exercised that authority to allow a consumer to modify or waive the requirement under § 226.31(c)(1) that consumers receive special disclosures for HOEPA loans at least three business days before consummation. § 226.31(c)(1)(iii). To waive the right, the consumer must give the creditor a dated, written statement that describes the *bona fide* personal financial emergency, specifically modifies or waives the waiting period, and bears the signature of all the consumers entitled to the waiting period.[99] Printed forms are prohibited.[100]

The requirements for modifying or waiving a pre-consummation waiting period under § 226.31(c)(1)(iii) are substantially similar to the requirements for waiving a pre-consummation waiting period under § 226.19(a)(3) and the right to rescind under §§ 226.15(e) and 226.23(e). Over the years, creditors have asked the Board to clarify the procedures for waiver and provide additional examples of a *bona fide* personal financial emergency, as discussed in detail above in the section-by-section analysis of § 226.23(e).

The Board's Proposal

For the reasons discussed above in the section-by-section analysis of proposed

[98] The Board added § 226.24(f) as part of the July 2008 HOEPA Final Rule. *See* 73 FR 44522, 44601–44602; Jul. 30, 2008.

[99] A consumer need not waive a waiting period entirely and may modify—that is, shorten—a waiting period. References to waiver of a waiting period in this Supplementary Information and in commentary § 226.31(c)(1)(iii) also refer to modification of a waiting period.

[100] The Board authorized the use of printed waiver forms for certain natural disasters occurring in 1993 and 1994. *See* §§ 226.23(e)(2)–(4) and § 226.31(c)(1)(iii).

§ 226.23(e), the Board proposes to clarify the procedure to be used for a waiver. The Board also proposes to provide new examples of circumstances that are a *bona fide* personal financial emergency (in addition to the current example of an imminent foreclosure sale, *see* comment 31(c)(1)(iii)–1) and circumstances that are not a *bona fide* personal financial emergency.

Procedures. Proposed § 226.31(c)(1)(iii) and the associated commentary clarify that the consumer may modify or waive a waiting period, after the consumer receives the HOEPA loan disclosures required by § 226.31(c)(1), if each consumer primarily liable on the legal obligation signs and gives the creditor a dated, written statement that describes the *bona fide* personal financial emergency, specifically modifies or waives the waiting period, and bears the consumer's signature. Proposed § 226.31(c)(1)(iii) provides that loan proceeds must be needed during the waiting period. This is consistent with comment 31(c)(1)(iii)–1, which incorporates by reference a substantially similar requirement under § 226.23(e).

The Board proposes to revise § 226.31(c)(1)(iii) and comment 31(c)(1)(iii)–1 to state that each consumer primarily liable on the obligation (rather than "each consumer entitled to the waiting period") must sign a waiver statement for a waiver to be effective, for clarity and conformity with § 226.19(a)(3). Other proposed revisions to § 226.31(c)(1)(iii) and comment 31(c)(1)(iii)–1 clarify that each consumer primarily liable on the obligation may sign a separate waiver statement.

The Board also proposes to move the discussion of circumstances that are a *bona fide* personal financial emergency in comment 31(c)(1)(iii)–1 to a new comment 31(c)(1)(iii)–2, to conform the waiver commentary under § 226.31(c)(1)(iii) with the waiver commentary under §§ 226.15(e) and 226.23(e). Proposed comment 31(c)(1)(iii)–2 is discussed below.

Bona fide personal financial emergency. Proposed comment 31(c)(1)(iii)–2 provides clarification regarding *bona fide* personal financial emergencies. The comment contains the current guidance under existing comment 31(c)(1)(iii)–1, that whether the conditions for a *bona fide* personal financial emergency are met is determined by the facts surrounding individual circumstances.

To provide additional guidance, proposed comment 31(c)(1)(iii)–2 also states that a *bona fide* personal financial emergency typically, but not always, will involve imminent loss of or harm to a dwelling or harm to the health or safety of a natural person. Proposed comment 31(c)(1)(iii)–2 also states that a waiver is not effective if a consumer's waiver statement is inconsistent with facts known to the creditor. Further, proposed comment 31(c)(1)(iii)–2 states that creditors may rely on the examples and other commentary provided in comment 23(e)–2 to determine whether circumstances are or are not a *bona fide* personal financial emergency. Those examples are discussed above in the section-by-section analysis of proposed § 226.23(e).

Written waiver statement. The Board also proposes to revise comment 31(c)(1)(iii)–1 to state that a waiver statement must be "written" rather than "handwritten". Since the time comment 31(c)(1)(iii)–1 was adopted, use of personal computers and printers has increased significantly. The commentary on other waiver provisions under Regulation Z uses the term "written" rather than "handwritten", moreover. *See* comments 15(e)–2, 19(a)(3)–1, and 23(e)–2. Using the term "written" would promote consistency among the waiver comments. A consumer (or a consumer's designee, such as a housing counselor, unrelated to the creditor or loan originator) may write a waiver statement by hand, typewriter, computer, or some other means. Nevertheless, § 226.31(c)(1)(iii) and the other waiver provisions continue to prohibit the use of printed forms.

The Board solicits comment regarding the proposed revisions to § 226.31(c)(1)(iii). In particular, the Board requests comment regarding the proposed commentary stating that creditors may rely on commentary on § 226.23(e) for proposed examples of circumstances that are and are not a *bona fide* personal financial emergency.

31(c)(2) Disclosures for Reverse Mortgages

The proposed rule would remove the timing rules for reverse mortgage disclosures from § 226.31(c)(2) and instead cross-reference the timing rules in proposed § 226.33(d), discussed in the section-by-section analysis of that section.

31(d) Basis of Disclosures and Use of Estimates

31(d)(2) Estimates

Section 226.31(d)(2) provides for the use of estimates in disclosures. Under this section, if any information necessary for an accurate disclosure is unknown to the creditor, the creditor must make the disclosure based on the best information reasonably available at the time the disclosure is provided, and state clearly that the disclosure is an estimate. Proposed § 226.19(a)(2) in the Board's August 2009 Closed-End Proposal would limit a creditors' use of estimates in certain closed-end mortgage disclosures. Under the proposal, the rules in § 228.19(a), including the limits on using estimated disclosures in § 226.19(a)(2), would apply to the disclosures for closed-end reverse mortgages, as discussed in the section-by-section analysis to § 226.33(d)(3). Accordingly, § 226.31(d)(2) would be revised and comment 31(d)(2)–2 added to clarify that the use of estimates would be subject to the restrictions in proposed § 226.19(a)(2). The Board requests comment on whether there are specific terms required to be disclosed for reverse mortgages in § 226.33(c) that a creditor may need to estimate in final closed-end reverse mortgage disclosures.

Section 226.32 Requirements for Certain Closed-End Mortgages

32(a) Coverage

32(a)(1)

32(a)(1)(ii)

As discussed in detail below, the Board is proposing to revise the definition of "points and fees" for purposes of HOEPA coverage, in § 226.32(b)(1). Under the points and fees test in § 226.32(a)(1)(ii), HOEPA coverage is determined by calculating whether the total points and fees exceeds 8 percent of the total loan amount (or a fixed-dollar alternative). Comment 32(a)(1)(ii)–1 explains how to determine the total loan amount for this purpose and provides several examples. The Board is proposing to revise the comment to be consistent with the proposed revisions to § 226.32(b)(1). Proposed comment 32(a)(1)(ii)–1 would state that, for purposes of determining the total loan amount, a transaction's prepaid finance charge and amount financed are determined without applying § 226.4(g).

32(a)(2)

32(a)(2)(ii)

Section 226.32 implements TILA Section 129 by providing rules for certain high-cost mortgages. TILA Section 129 exempts reverse mortgage transactions as defined in TILA Section 103(bb). 15 U.S.C. 1639. Among the restrictions on high-cost mortgage loans are restrictions on balloon payments and negative amortization. In reverse mortgages, consumers do not make regular periodic payments. Instead, interest charges and fees are added to the consumer's loan balance, causing negative amortization. In addition, consumers repay a reverse mortgage in a single payment when the loan becomes due. For these reasons, a closed-end reverse mortgage that meets the definition of a high-cost mortgage loan (because the annual percentage rate or points and fees exceed those specified in § 226.32(a)(1)) would be prohibited by Section 129 of TILA. Consequently, Congress exempted reverse mortgages from Section 129 and instead imposed the disclosure requirements in TILA Section 138. (In addition, open-end reverse mortgages are covered by TILA Section 138 even though open-end credit plans are exempt from TILA Section 129.)

TILA Section 103(bb) defines the term "reverse mortgage transaction" to mean, among other things, a nonrecourse transaction. 15 U.S.C. 1602(bb). That is, the reverse mortgage must limit the homeowner's liability under the contract to the proceeds of the sale of the home (or a lesser amount specified in the contract). Consequently, if a closed-end reverse mortgage allows recourse against the consumer, and the transaction is a high-cost mortgage loan under § 226.32, the transaction is subject to all the requirements of § 226.32 including the limitations concerning balloon payments and negative amortization.

As discussed in the section-by-section analysis to § 226.33 below, the proposed rule would modify the definition of a reverse mortgage for the purposes of disclosures and other substantive protections to include reverse mortgages that allow recourse against the consumer (that is, that do not limit the consumer's liability under the contract to the proceeds from the sale of the home or a lesser specified amount). Reverse mortgages that allow for recourse against the consumer present even greater consumer protection concerns than nonrecourse reverse mortgages because the consumer or consumer's estate could be liable for significantly more than the home is worth when such a reverse mortgage becomes due. In addition, for these same reasons, the proposed rule would preserve the narrow exemption for nonrecourse reverse mortgages from the high-cost loan provisions in § 226.32(a)(2)(ii). Current comment 33(a)–1, which discusses the nonrecourse limitation, would be moved to comment 32(a)(2)(ii)–1.

32(b) Definitions

32(b)(1)

In the August 2009 Closed-End Proposal, the Board proposed to expand the definition of the finance charge and APR to include most closing costs, including third-party closing costs. 74 FR 43232, 43241, Aug. 26, 2009. The Board also proposed to include these costs in the "points and fees" definition for purposes of HOEPA coverage. The Board is now proposing to amend § 226.32(b)(1) to preserve the existing treatment of certain closing costs in the "points and fees" definition for HOEPA coverage purposes, which does not cover most third-party charges. Under proposed § 226.32(b)(1), points and fees would include all items included in the finance charge pursuant to § 226.4 (other than interest or time-price differential), except that, for purposes of this definition, § 226.4(g) would not apply.

Background

Under § 226.32(b)(1), "points and fees" includes (i) Items required to be disclosed under §§ 226.4(a) and 226.4(b), except interest or the time-price differential; (ii) all compensation paid to mortgage brokers; (iii) all items listed in § 226.4(c)(7) (other than amounts held for future payment of taxes) unless the charge is reasonable, the creditor receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the creditor; and (iv) premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage (whether or not the debt-cancellation coverage is insurance under applicable law) that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident, written in connection with the credit transaction.

In the August 2009 Closed-End Proposal, the Board proposed to amend § 226.4 to provide a simpler, more inclusive definition of the finance charge. *See* 74 FR 43232, 43321–23, Aug. 26, 2009. The Board's objective was to improve the utility of the APR as a single number that consumers can use to compare the costs of loan offers, and to facilitate compliance and reduce litigation costs for creditors. Under the August 2009 Closed-End Proposal, the finance charge and APR would include most closing costs, including many third-party costs such as appraisal fees and premiums for title insurance. The Board also proposed to amend the definition of "points and fees" in § 226.32(b)(1) to conform to the more inclusive finance charge definition. The Board noted that, as a result of the more inclusive finance charge, APRs and points and fees would increase, and more loans would potentially qualify as higher-priced mortgage loans, HOEPA loans covered by §§ 226.32 and 226.34, and loans subject to certain State anti-predatory lending laws. 74 FR 43344–45, Aug. 26, 2009. Nevertheless, the Board concluded, based on the limited data it had, that the proposal to improve the APR would be in consumers' interests. Comment was solicited on the potential impact of the proposed rule.

Numerous mortgage creditors and their trade associations commented on the proposal to make the finance charge and APR more inclusive. Most expressed agreement in principle with the proposed finance charge definition. Nevertheless, most industry commenters opposed the proposal, stating that it would cause many prime loans to be incorrectly classified as higher-priced mortgage loans under § 226.35 and that it would inappropriately expand the coverage of HOEPA and similar State laws. These commenters indicated that the more inclusive finance charge would have a much more significant impact under the points and fees tests than under the APR tests. One creditor estimated that 30 to 50 percent of its subprime loans, which currently are higher-priced mortgage loans but not HOEPA loans, would become HOEPA (or state "high-cost") loans under the proposal.

Consumer advocates uniformly supported the proposal to make the finance charge and APR more inclusive. They recognized the resulting expansion of coverage under §§ 226.32 and 226.35, and under similar State laws, but they argued that any such expanded coverage would be appropriate. Consumer advocates stated that the more inclusive finance charge and APR only would reveal newly covered loans for what they have always been, namely, HOEPA loans and higher-priced mortgage loans. Accordingly, they argued, the increase in the coverage of §§ 226.32 and 226.35, as well as affected State laws, would be warranted.

The Board's Proposal

The Board is proposing to amend § 226.32(b)(1) to retain the existing treatment of third-party charges in the points and fees definition. Under proposed § 226.32(b)(1)(i), points and fees would include all items included in the finance charge pursuant to § 226.4, except interest or the time-price differential and except that § 226.4(g) would not apply. Thus, § 226.4(g), as proposed in the August 2009 Closed-End Proposal, still would include most third-party charges in the finance charge, but proposed § 226.32(b)(1)(i) would preserve the existing treatment of such charges for purposes of points and fees. As discussed above, the Board is also proposing to amend comment 32(a)(1)(ii)–1 to make the determination of the total loan amount consistent with this proposal.

As discussed above, the Board recognized when it issued the August 2009 Closed-End Proposal that the more inclusive finance charge would have some impact on HOEPA coverage. At the time, the Board lacked adequate data to quantify the impact, but believed that the more inclusive finance charge would benefit consumers. Based on the comments, the Board now believes that the changes to § 226.32(b)(1) in the August 2009 Closed-End Proposal would have a substantial impact on HOEPA coverage. The objectives of the more inclusive finance charge are to enhance the APR's utility to consumers as a comparison shopping tool, as well as to eliminate compliance burden and legal risk for industry. *See* 74 FR 43232, 43243, Aug. 26, 2009. The Board does not believe those objectives support an expansion of HOEPA coverage under the points and fees test.

Relatively few loans are made that meet HOEPA's coverage tests. The lack of lending activity above HOEPA's thresholds may be attributable to HOEPA's substantive restrictions on loan terms, additional liability for violations under TILA Section 130(a)(4), 15 U.S.C. 1640(a)(4), and concerns about HOEPA's assignee liability provision. The Board is concerned that significantly expanding the loans covered by HOEPA would result in reduced access to credit. Accordingly, the Board now proposes to amend § 226.32(b)(1) to retain the existing treatment of certain charges in the definition of points and fees.[101] Charges that would be excluded from points and fees under proposed § 226.32(b)(1) include closing agent charges under § 226.4(a)(2); miscellaneous charges under § 226.4(c), including application fees charged to all applicants under § 226.4(c)(1), and the real estate related fees listed in § 226.4(c)(7) when reasonable and paid to third parties; and certain government recording and related charges and insurance premiums incurred in lieu of such charges under § 226.4(e).[102]

Although this proposal would avoid improper coverage of certain loans under HOEPA, many such loans nevertheless would remain higher-priced mortgage loans under § 226.35. As a result, they still would be subject to the Board's substantive protections for such loans, including the prohibition of lending based on the value of the collateral without regard to the consumer's repayment ability, significant restrictions on prepayment penalties, and the requirement that an escrow account for taxes and insurance be established. The Board believes that the mortgage industry's reluctance to make HOEPA loans does not extend to the same degree to higher-priced mortgage loans. Nevertheless, the Board also is concerned that the coverage of § 226.35 not be unduly expanded by the more inclusive finance charge and annual percentage rate and is therefore proposing revisions to § 226.35(a), discussed below.

This proposal would reorganize and revise the staff commentary under § 226.32(b)(1) to conform to the proposed changes to the regulation. The commentary's substantive guidance would be retained to the extent it remains pertinent. Proposed comment 32(b)(1)(i)–1 would clarify that loans that are secured by a consumer's principal dwelling and therefore potentially subject to § 226.32 are subject to the special rules for the finance charge calculation for transactions secured by real property or a dwelling. The comment also would explain, however, that the special rules in § 226.4(g) govern only a transaction's finance charge and have no effect on the transaction's points and fees, and it would illustrate the difference with an example. Proposed comment 32(b)(1)(ii)–1 would note that points and fees always includes mortgage broker compensation paid by the consumer, but the comment would clarify that compensation that is not paid by the consumer is excluded. For example, compensation paid to a mortgage broker by a creditor, including a yield spread premium, is not included in points and fees.

The August 2009 Closed-End Proposal also would have amended § 226.32(b)(1)(i) to follow more closely the provision of TILA that it implements, TILA Section 103(aa)(4)(A), 15 U.S.C. 1602(aa)(4)(A). The proposed changes were for clarity, with no substantive effect intended. For ease of reference, this proposal republishes those proposed changes. The Board requests that interested parties limit the scope of their comments to the newly proposed changes to § 226.32(b)(1) and associated commentary discussed in the **SUPPLEMENTARY INFORMATION** to this proposed rule.

Section 226.33 Requirements for Reverse Mortgages

Introduction

Reverse mortgage products enable eligible borrowers to exchange the equity in their homes for cash without requiring borrowers to repay the loan while they live in their homes. Reverse mortgage proceeds may used for a variety of purposes. According to a recent GAO study, the most common uses of reverse mortgage proceeds are for paying off an existing mortgage, home repairs or improvements, or improving quality of life.[103] For many borrowers, a reverse mortgage may provide the only funds available to pay for health care needs and other living expenses. As a result, reverse mortgages, if offered appropriately, could become an increasingly important mechanism for financial institutions to address the credit needs of an aging population.

The need to provide consumers with adequate information about reverse mortgages and to ensure appropriate consumer protections is high. Reverse mortgages are complex loan products that present a wide range of complicated options to borrowers. Moreover, they are typically secured by the borrower's primary asset—his or her home.

Reverse mortgage products. The reverse mortgage market currently consists of two types of products: proprietary products offered by individual lenders and FHA-insured reverse mortgages offered under HUD's HECM program. A HECM loan is subject

[101] The Board notes that this proposal is consistent with the recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (July 21, 2010), which amends TILA Section 103(aa)(1) to exclude all "bona fide third party charges" from points and fees. The Dodd-Frank Act makes numerous other changes to HOEPA, including changes to the definition of points and fees and to the points and fees test itself. This proposal is intended only to preserve the existing treatment under the points and fees test of third-party charges, virtually all of which generally are excluded, notwithstanding the Board's proposal to include those charges in the finance charge. The Board expects to propose for comment additional revisions to Regulation Z in a future rulemaking to implement the amendments to HOEPA under the Dodd-Frank Act.

[102] Credit insurance premiums and similar charges that are disclosed in accordance with § 226.4(d)(1) or (d)(3), as applicable, would be added to the finance charge under the Board's proposal, but those charges already are included in points and fees under § 226.32(b)(1)(iv).

[103] U.S. Government Accountability Office, *Reverse Mortgages: Product Complexity and Consumer Protection Issues Underscore Need for Improved Controls Over Counseling for Borrowers,* GAO–09–606, 7–8 (June 2009) (citing AARP, *Reverse Mortgages: Niche Product or Mainstream Solution? Report on the 2006 AARP Nat'l Survey of Reverse Mortgage Shoppers* (Washington, DC: Dec. 2007)).

to HUD regulations that establish a range of consumer protections and other requirements.

Reverse mortgages generally are nonrecourse, home-secured loans that provide one or more cash advances to borrowers and require no repayments until a future event. Both HECMs and proprietary reverse mortgages generally must be repaid only when the last surviving borrower dies, all borrowers permanently move to a new principal residence, or the loan is in default. For example, repayment would be required when the borrower sells the home or has not resided in the home for a year. A borrower may be in default on a reverse mortgage when the borrower fails to pay property taxes, fails to maintain hazard insurance, or lets the property fall into disrepair.

When a reverse mortgage becomes due, the home must be sold or, alternatively, the borrower (or surviving heirs) may repay the full amount of the loan including accrued interest. If the home is sold, however, the borrower or estate generally is not liable to the lender for any amounts in excess of the value of the home.

To obtain a reverse mortgage, the borrower must occupy the home as a principal residence and generally be at least 62 years of age. Reverse mortgages are typically structured as first lien mortgages and require that any prior mortgage be paid off either before obtaining the reverse mortgage or with the funds from the reverse mortgage. The funds from a reverse mortgage may be disbursed in several different ways:

- A single lump sum that distributes up to the full amount of the principal credit limit in one payment;
- A credit line that permits the borrower to decide the timing and amount of the loan advances;
- A monthly cash advance, either for a fixed number of years selected by the borrower or for as long as the borrower lives in the home; or
- Any combination of the above selected by the borrower.

Generally, the amount of money the consumer may borrow will be larger when the consumer is older, the home is more valuable, or interest rates are lower. Interest rates on a reverse mortgage may be fixed or variable.

Most reverse mortgages have been structured as open-end lines of credit. For example, in fiscal year 2008, 89 percent of HECM borrowers chose to receive money solely as a line of credit and another 6 percent chose to receive a line of credit combined with a monthly payment. Generally, those choosing a line of credit withdrew about 60 percent of their funds at account opening.[104] In addition, most HECMs have had variable interest rates.[105] However, in 2008 HUD issued a mortgagee letter regarding the availability of fixed-rate HECMs.[106] Since then, originations of fixed-rate HECMs have grown and in recent months have been the majority of HECM originations.[107] Fixed-rate HECMs are generally structured as closed-end credit and borrowers usually may receive loan proceeds only as a lump sum of the full principal amount at closing.

Reverse mortgage market trends. The volume of reverse mortgages has grown considerably over the years. HECM originations, which account for over 90 percent of the market, have grown from 157 loans in fiscal year 1990 to more than 112,000 loans in fiscal year 2008.[108] A substantial portion of this growth has occurred in recent years, with HECM originations nearly tripling between 2005 and 2008.[109] A secondary market for HECMs exists, with Fannie Mae having purchased 90 percent of HECM loans as of 2008.[110] In addition, in 2007 Ginnie Mae developed and implemented a HECM mortgage-backed security with issuance growing to $1.5 billion for 2009.[111]

Proprietary reverse mortgages have also experienced growth, but that growth has stalled in the last few years due to market conditions.[112] A key feature of proprietary reverse mortgages is that they generally offer loans in amounts greater than the HECM loan limits.[113] The Housing and Economic Recovery Act of 2008 raised the HECM loan limit.[114] As a result, at least one lender, Fannie Mae, discontinued its proprietary reverse mortgage product in 2008.[115] However, a report by the GAO in 2009 found that most lenders with proprietary products planned to offer them again, depending on the availability of funding in the secondary market.[116]

Interagency supervisory guidance. In December 2009, the Federal banking agencies, through the Federal Financial Institutions Examination Council (FFIEC), published proposed supervisory guidance on reverse mortgage products (Proposed Reverse Mortgage Guidance).[117] The FFIEC finalized this Guidance in August 2010 (Final Reverse Mortgage Guidance or Guidance).[118] The Final Reverse Mortgage Guidance is designed to help financial institutions ensure that their risk management and consumer protection practices adequately address the compliance and reputation risks raised by reverse mortgage lending. The Guidance addresses the consumer protection concerns raised by reverse mortgages, and focuses on the need for banks, thrifts, and credit unions to provide clear and balanced information to consumers about the risks and benefits of reverse mortgages while consumers are shopping for these products.

Specifically, the Final Reverse Mortgage Guidance states that lenders offering proprietary products should require counseling from "qualified independent counselors" before a consumer submits an application or pays an application fee for a reverse mortgage product. The Guidance also states that institutions should take steps to avoid any appearance of a conflict of interest. Accordingly, the Guidance advises institutions to adopt clear policies stating that borrowers are not required to purchase other financial products to obtain a reverse mortgage. Institutions are also advised to guard against inappropriate compensation or incentive policies that encourage loan originators to link reverse mortgage products to other financial products.[119]

Current Reverse Mortgage Disclosures

TILA Section 103(bb) defines the term "reverse mortgage transaction" as a

[104] *Id.* at 8.

[105] HUD Single Family Portfolio Snap Shot—HECM Loans, data for Inception 1989–Dec. 2008 *http://www.hud.gov/offices/hsg/comp/rpts/hecmsfsnap/hecmsfsnap.cfm.*

[106] HUD Mortgagee Letter 2008–08, March 28, 2008.

[107] HUD Single Family Portfolio Snap Shot—HECM Loans, data for Jan. 2010–May 2010 *http://www.hud.gov/offices/hsg/comp/rpts/hecmsfsnap/hecmsfsnap.cfm.*

[108] U.S. Government Accountability Office, *Reverse Mortgages: Policy Changes Have Had Mostly Positive Effects on Lenders and Borrowers, but These Changes and Market Developments Have Increased HUD's Risk,* GAO–09–836, 4–5 (July 2009).

[109] *Id.*

[110] *Id* at 7.

[111] Ginnie Mae, *Ginnie Mae Finishes 2009 Strong,* January 22, 2010, *http://www.ginniemae.gov/news2010/01–22presshud.pdf.*

[112] U.S. Government Accountability Office, GAO–09–836 at 18.

[113] *Id.*

[114] Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289 (July 30, 2008), § 2122(a)(5) (amending Section 255 of the National Housing Act, 12 U.S.C. 1715z–20(g)).

[115] Fannie Mae Reverse Mortgage Lender Letter 2008–3: Announcement to Terminate Purchase of Home Keeper® Reverse Mortgages (Sept. 3, 2008).

[116] U.S. Government Accountability Office, GAO–09–836 at 18.

[117] *Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks,* 74 FR 66652, Dec. 16, 2009 (Proposed Reverse Mortgage Guidance).

[118] *Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks,* 75 FR 50801, Aug. 17, 2010 (Final Reverse Mortgage Guidance).

[119] *Id.* at 50811.

nonrecourse transaction in which a mortgage, deed of trust, or equivalent consensual security interest is created against the consumer's principal dwelling securing one or more advances. 15 U.S.C. 1602(bb). In addition, the payment of any principal, interest and shared appreciation or equity is due and payable (other than in the case of default) only after the transfer of the dwelling, the consumer ceases to occupy the dwelling as a principal dwelling, or the death of the consumer.

TILA Section 138 requires disclosures for reverse mortgages in addition to the other disclosures required by TILA. 15 U.S.C. 1648. Specifically, TILA Section 138 requires disclosure of a good faith estimate of the projected total cost of the reverse mortgage to the consumer expressed as a table of annual interest rates, to be provided at least three business days before consummation. Each annual interest rate in the table is to be based on a projected total future credit balance under a projected appreciation rate for the dwelling and a term for the mortgage. The statute calls for at least three projected appreciation rates and at least three credit transaction periods as determined by the Board. The periods are to include a short-term reverse mortgage, a term equaling the consumer's life expectancy, and a longer term as the Board deems appropriate. The disclosure must also include a statement that the consumer is not obligated to complete the reverse mortgage transaction merely because the consumer has received the disclosure or signed an application.

Under TILA Section 138, the projected total cost of the reverse mortgage used to calculate the table of annual interest rates includes all costs and charges to the consumer, including the costs of any associated annuity that the consumer will or is required to purchase as part of the reverse mortgage. The projected total costs also includes any shared appreciation or equity that the legal obligation entitles the lender to receive, and any limitation on the liability of the consumer under the reverse mortgage, such as nonrecourse limits and equity conversion agreements. In addition, the total cost projection also reflects all payments to and for the benefit of the consumer. If the consumer purchases an annuity (whether or not required by the lender as a condition of making a reverse mortgage), any annuity payments received by the consumer and financed from the proceeds of the loan are considered the payments to the consumer, rather than the reverse mortgage proceeds that were used to finance the annuity.

Sections 103(bb) and 138 of TILA are implemented in §§ 226.31(c)(2) and 226.33. Section 226.31(c)(2) requires the creditor to furnish the disclosures for reverse mortgages at least three business days before consummating a closed-end credit transaction or the first transaction under an open-end credit plan. Section 226.33 contains the statutory definition of "reverse mortgage transaction" and the content of the reverse mortgage disclosures. Under Section 226.33, the reverse mortgage disclosures must include a statement that the consumer is not obligated to complete the transaction, a good-faith projection of the total cost of credit expressed as a table of "total-annual-loan-cost rates" (TALC rates) and an explanation of the table. The disclosures must also include an itemization of loan terms, charges, the age of the youngest borrower, and the appraised property value. Appendix K to Regulation Z provides instructions on how to calculate the TALC rates required to be disclosed, based on the calculation method used in Appendix J for the closed-end APR, and provides a model and sample disclosure form. Appendix L to Regulation Z contains the loan periods creditors must use in disclosing the TALC rates and a table of life expectancies that must be used to determine loan periods based on the consumer's life expectancy.

Section 226.33 requires that the table show TALC rates for assumed annual appreciation rates of 0%, 4%, and 8%. It also requires that TALC rates be provided for the assumed loan periods of: two years; the consumer's actuarial life expectancy; and the consumer's actuarial life expectancy multiplied by a factor of 1.4. In addition, at the creditor's option, the table may contain a fourth assumed loan period based on the consumer's actuarial life expectancy multiplied by 0.5.

The commentary to § 226.33 contains a number of clarifications. Comment 33(a)–1 clarifies that a transaction must be nonrecourse to meet the definition of a reverse mortgage in section 226.33(a). That is, the consumer's liability must be limited to the proceeds from the sale of the home. Comment 33(a)–1 clarifies, however, that if a closed-end reverse mortgage does not limit the consumer's liability to the proceeds of the sale of the home, and the transaction meets the definition of a high-cost mortgage loan under § 226.32, the transaction is subject to all the requirements of §§ 226.32 and 226.34. Comment 33(a)(2)–1 clarifies that the term "default" is not defined by the statute or regulation, but rather by the legal obligation and state or other applicable law. Comment 33(a)(2)–2 clarifies that to meet the definition of a reverse mortgage transaction, a creditor cannot require principal, interest, or shared appreciation or equity to be due and payable (other than in the case of a default) until after the consumer's death, transfer of the dwelling, or the consumer ceases to occupy the dwelling as a principal dwelling. This comment further clarifies that the reverse mortgage obligation may state a specific maturity date or term of repayment and still meet the definition of a reverse mortgage, as long as the maturity date or term will not cause maturity prior to the occurrence of any of the maturity events recognized in the regulation. For example, the obligation could state a term but automatically extend the term for consecutive periods if no recognized maturity event has occurred.

Comment 33(c)(1)–1 clarifies that all costs and charges the consumer incurs in a reverse mortgage are included in the projected total cost whether or not the cost or charge is a finance charge under § 226.4. Current comment 33(c)(1)–2 clarifies that the amount paid by the consumer for an annuity is a cost to the consumer. Comment 33(c)(1)–3 clarifies that costs incurred in connection with the sale or transfer of the property subject to the reverse mortgage are not included in the cost to the consumer.

Comment 33(c)(2)–1 clarifies that certain contingent payments to the consumer are excluded from the total cost projection. Comments 33(c)(3)–1 and 33(c)(4)–1 clarify that shared appreciation or shared equity, and limitations on the consumer's liability, respectively, are included in the projected total cost. Comment 33(c)(4)–2 provides a uniform assumption that, if the consumer's liability is limited to the "net proceeds" from the sale of the home, the costs associated with selling the dwelling should be assumed to be 7 percent of the projected total sale price, unless another amount is specified in the legal obligation.

Commentary to Appendix K and Appendix L provides further guidance on calculating TALC rates and on the clear and conspicuous standard for the model disclosure form.

Current Open-End and Closed-End Disclosures

Reverse mortgages are subject to the disclosure requirements for other home-secured credit. § 226.31(a). Reverse mortgages structured as open-end credit are subject to the provisions in Subpart B of Regulation Z, including the provisions in §§ 226.5b and 226.6

applicable to HELOCs. Closed-end reverse mortgages are subject to Subpart C of Regulation Z.

The current disclosures required for HELOCs and closed-end mortgages require creditors to provide information about costs and repayment amounts that must be calculated using a specific loan term. For example, even though reverse mortgages are single-payment transactions, they are currently subject to the requirements to disclose the payment schedule for closed-end loans under § 226.18(g), or the repayment example for a $10,000 HELOC draw under § 226.5b(d)(5)(iii). To disclose the single payment amount, the creditor must know when the loan will become due in order to calculate the amount of interest that will be charged. Yet reverse mortgage creditors must base these disclosures on an assumed repayment period, because the exact date that a reverse mortgage will become due and payable is unknown. The current commentary provides guidance on assumptions creditors must use. *See* comments 5b(d)(5)(iii)–4, 5b(d)(12)(xi)–10 and 17(c)(1)–14. For instance, creditors are instructed to base disclosures on the term of the reverse mortgage if a definite term exists, even though the consumer may not actually repay the loan at the end of the term. If no term exists, the disclosures must be based on the consumer's life expectancy.

The August 2009 Proposals

The Board's August 2009 proposals on closed-end mortgages and HELOCs were developed based on consumer testing that focused on the more common (forward) versions of those products. As a result, the proposed disclosures focus on terms, such as monthly payment amounts that are not as relevant or useful to reverse mortgage consumers. Yet these disclosures contain information about other terms that are relevant to reverse mortgage consumers. The Board requested comment in the August 2009 HELOC Proposal about how the proposed disclosures could be modified for reverse mortgages. Commenters who addressed the issue suggested that the Board develop a single disclosure form for reverse mortgages that would combine the disclosures under § 226.33 with those under §§ 226.5b and 226.6 for HELOCs, or § 226.18 for closed-end credit, as appropriate.

Proposed Reverse Mortgage Disclosures

The Board is proposing three consolidated reverse mortgage disclosure forms: an early disclosure for open-end reverse mortgages, an account-opening disclosure for open-end reverse mortgages, and a closed-end reverse mortgage disclosure. The Board's proposal would ensure that consumers receive meaningful information in an understandable format using forms that are designed, and have been consumer tested, for reverse mortgage consumers. Rather than receive two or more disclosures under TILA that come at different times and have different formats, consumers would receive all the disclosures in a single format that is similar regardless of whether the reverse mortgage is structured as open-end or closed-end credit. The Board's proposal would also facilitate compliance with TILA by providing creditors with a single set of forms that are specific to and designed for reverse mortgages, rather than requiring creditors to modify and adapt disclosures designed for forward mortgages.

33(a) Definition

As discussed above in the section-by-section analysis to § 226.32, TILA section 103(bb), implemented by current § 226.33(a), defines a "reverse mortgage transaction" as, among other things, a nonrecourse transaction. *See* 15 U.S.C.1602(bb). The proposal would simplify the defined term from "reverse mortgage transaction" to "reverse mortgage." The proposed rule would also modify the definition of a reverse mortgage to include both nonrecourse and recourse transactions whether structured as open-end or closed-end credit. Currently, any reverse mortgage that allows recourse against the consumer (that is, that does not limit the consumer's liability to the proceeds from the sale of the home) is not covered by § 226.33. The proposal would ensure that the disclosures and other substantive protections apply to all reverse mortgages regardless of whether or not they contain a nonrecourse provision.

The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uniformed use of credit. 15 U.S.C. 1601(a), 1604(a). As discussed above in the section-by-section analysis to § 226.32, TILA's definition of a "reverse mortgage transaction" was added in the context of a excluding reverse mortgages from coverage under TILA Section 129's high-cost loan provisions. TILA Section 129 prohibits high-cost loans with negative amortization and balloon payments, both of which are features of reverse mortgages. 15 U.S.C. 1639. Thus, by defining a "reverse mortgage transaction" as only a nonrecourse reverse mortgage, the statute prohibits making high-cost reverse mortgages that do not limit recourse against the consumer. However, reverse mortgages that allow for recourse against the consumer and are not prohibited by TILA Section 129 (either because they are open-end or because they are not high-cost reverse mortgages) present even greater consumer protection concerns than nonrecourse reverse mortgages. The consumer or the consumer's estate could be liable for significantly more than the home is worth when a reverse mortgage that allows for recourse against the consumer becomes due. (For this reason the proposal would modify § 226.32 to preserve the current narrow exemption for only reverse mortgages that are nonrecourse.) As discussed in the section-by-section analysis to § 226.33(c) below, the proposed reverse mortgage disclosures would require specific statements about the consumer's liability under a reverse mortgage that allows recourse against the consumer. The Board believes this information, and the other proposed consumer protections for reverse mortgages, are appropriate for all reverse mortgages.

33(b) Reverse Mortgage Document Provided On or With the Application

Based on the results of consumer testing and similar to the Board's August 2009 Closed-End Mortgage and HELOC Proposals, this proposal would require creditors to provide consumers with a Board publication, or a substantially similar document, for reverse mortgages. The publication, entitled "Key Questions to Ask about Reverse Mortgage Loans," discusses how a reverse mortgage works and describes loan terms and conditions that are important for consumers to consider when deciding whether to pursue a reverse mortgage.

In addition, the document would disclose to consumer that they are not obligated to purchase any other financial product or service, along with explanatory information. Proposed § 226.40(a), discussed in the section-by-section analysis to that section below, would prohibit a creditor or loan originator from requiring a consumer to purchase any financial or insurance product as a condition of obtaining a reverse mortgage. The Board believes that providing information to consumers about this protection will help them avoid potential deception or misunderstanding about whether the purchase of an offered financial or insurance product is required. The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uniformed use of credit. 15 U.S.C. 1601(a), 1604(a).

The Board proposes to require creditors to provide this publication at the time a consumer is given an application form or before the consumer pays a nonrefundable fee (except a fee for reverse mortgage counseling), whichever is earlier. Special rules under proposed § 226.33(b)(2)–(4) for when the consumer accesses an application form electronically and when the creditor receives a consumer's application from an intermediary agent or broker are modeled after the Board's TILA proposals for HELOCs and closed-end mortgages. *See* 74 FR 43428, 43446–43450, Aug. 26, 2009; 74 FR 43232, 43268–43269, Aug. 26, 2009.

33(c) Content of Disclosures for Reverse Mortgages

Current § 226.33(b) details the content of disclosures for reverse mortgages. It requires a notice that the consumer is not obligated to complete the reverse mortgage merely because the consumer has received the disclosures or has signed an application as required by TILA Section 138(a)(2). 15 U.S.C. 1648(a)(2). It also requires an itemization of loan terms and charges, and disclosure of the age of the youngest borrower and the appraised property value. Finally, it requires a good faith projection of the total cost of credit in the form of a table of "total-annual-loan-cost rates" and an explanation of the table.

Under the proposed rule, the content of the reverse mortgage disclosures would be moved to § 226.33(c). The proposed rule would retain the no-obligation notice in § 226.33(c)(1) and would add a requirement that if the creditor provides space for the consumer's signature, the creditor must state that the signature only confirms receipt of the disclosure statement. Section 226.33(c)(2) would require certain identification information for the creditor and loan originator. Section 226.33(c)(3) would require the itemization of the consumer's name, address, account number, the age of each borrower, and the appraised property value. As discussed in the section-by-section analysis below, the proposed rule would also require a number of new disclosures about reverse mortgages. The Board proposes these new disclosures pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uniformed use of credit.

Table of Total-Annual-Loan-Cost Rates

Based on consumer testing the Board is proposing to replace the disclosure of the table of total-annual-loan-cost (TALC) rates with other information that is likely to be more meaningful to and better understood by consumers.

The table of TALC rates is designed to show consumers how the cost of the reverse mortgage varies over time and with house price appreciation. Generally, the longer a consumer keeps a reverse mortgage the lower the relative cost will be because the upfront costs of the reverse mortgage will be amortized over a longer period of time. In addition, home-value appreciation can lower the total cost of the reverse mortgage if the consumer eventually benefits from a limitation on the consumer's liability, such as a nonrecourse limit.

In order to show the effect of time and home-value appreciation on the cost of the reverse mortgage, current § 226.33(c) requires a disclosure for three periods: two years; the consumer's life expectancy; and the consumer's life expectancy multiplied by 1.4. In addition, creditors have the option of including a loan period based on the consumer's life expectancy multiplied by 0.5. Creditors must also show TALC rates for assumed annual appreciation rates of 0%, 4%, and 8%. As a result, the table of TALC rates must show at least nine TALC rates and may show twelve TALC rates. Usually, the TALC rates will decline over time even though the total dollar cost of the reverse mortgage is rising due to interest and fees being charged and added to an increasing loan balance.

In the consumer testing conducted for the Board on reverse mortgage disclosures, participants were shown a disclosure with the table of TALC rates that is currently required. Very few consumers understood the table of TALC rates.[120] Although participants seemed to understand the paragraphs explaining the TALC table, the vast majority could not explain how the description related to the percentages shown in the TALC table. A number of participants could not even attempt to explain what the TALC table was showing. Those consumers who attempted to explain the TALC table could not explain why the TALC rates were declining over time even though the reverse mortgage's loan balance was rising. Most participants thought the TALC rates shown were interest rates, and interpreted the table as showing that their interest rate would decrease if they held their reverse mortgage for a longer period of time. When asked whether the information in the TALC table would make a reverse mortgage easier or more difficult to understand, the vast majority of participants stated that this information would make their reverse mortgage more difficult to understand. Consumers, including those who currently have a reverse mortgage (and thus presumably received the TALC disclosure), consistently stated that they would not use the disclosure to decide whether to obtain a reverse mortgage.

These results are consistent with the Board's consumer testing of the APR for closed-end mortgages and student loans. The TALC rates express loan costs as annualized percentage rates, similar to the closed-end APR. Yet consumer testing conducted by the Board has found that the closed-end APR—the cost of credit expressed as a single percentage rate—is difficult for many consumers to understand even when an explanation is provided. To understand the table of TALC rates, not only must consumers understand the concept of expressing total loan costs as an annualized rate, they must further be able to evaluate the TALC rates along two other dimensions (time and home-value appreciation). The consumer testing conducted for the Board does not indicate that simplifying the table of TALC rates, such as by removing the dimension of home-value appreciation, would materially improve consumers' understanding of the disclosure. Instead, consumers consistently expressed a preference for a disclosure providing total costs as a dollar amount.

For these reasons, the proposed rule would remove the table of TALC rates from the reverse mortgage disclosure. Under the Board's exception and exemption authorities under TILA Sections 105(a) and 105(f) the Board is proposing to make an exception to the requirement in TILA Section 138 that the table of TALC rates be provided. The Board believes that by removing a disclosure that almost all consumers found to be unhelpful, and that appeared to be misleading to some, will

[120] *See* ICF Macro International, Inc., *Design and Testing of Truth in Lending Disclosures for Reverse Mortgages,* 11, 18, 27, 35–26 (July 2010) available at *http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20100816_Reverse_Mortgage_Report_(7–28)_(FINAL).pdf.*

effectuate the purposes of TILA by providing meaningful disclosure of credit terms to the consumer and assisting consumers in avoiding the uninformed use of credit. The Board has considered that reverse mortgages are secured by the consumer's principal dwelling and are likely to be made for relatively large amounts. The Board also considered that reverse mortgage borrowers may lack financial sophistication relative to the complexity of the reverse mortgage transaction, the importance of the credit and supporting property to the borrower, and whether the goal of consumer protection would be undermined by an exception. In addition, the Board considered the extent to which the requirement to provide the table of TALC rates complicates, hinders, or makes more expensive the credit process for reverse mortgages. Given the importance of the reverse mortgage to the borrower and the fact that the table of TALC rates provides no meaningful benefit in the form of useful information or protection, the Board believes that an exemption is warranted. As discussed below, the Board is proposing new disclosures to explain the total cost of a reverse mortgage more effectively pursuant to its authority in TILA Section 105(a) to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uniformed use of credit.

33(c)(4) Information about the Reverse Mortgage

Proposed § 226.33(c)(4) requires a statement that the consumer does not have to repay the reverse mortgage while remaining in the home. It would also require a description of the types of payments the consumer may receive, such as an initial advance, a monthly payment, or discretionary cash advances in which the consumer controls the timing of advances. This section would require a statement that the consumer will retain title to the home and must pay property taxes and insurance and maintain the property. The proposal also requires a statement that the consumer will have access to the loan funds and continue to receive any payments even if the loan's principal balance exceeds the value of the home, as long as the consumer does not default. Finally, it would require a description of the events that cause the reverse mortgage to become due and payable, and a statement that the consumer must repay the loan including interest and fees once such an event occurs. In the consumer testing conducted for the Board, many consumers indicated that this information was new to them, and that they found it to be important. The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uniformed use of credit.

33(c)(5) Payment of Loan Funds

Proposed § 226.33(c)(5) requires an itemization of the types of payments the creditor will make to the consumer. The disclosure must include the label "Initial Advance" along with the amount of any initial advance made to the consumer at consummation or, in the case of an open-end reverse mortgage, once the consumer becomes obligated on the plan. *See* proposed § 226.33(c)(5)(i)(A). The disclosure must also include a statement that the funds will be paid to the consumer after the consumer accepts the reverse mortgage. In addition, the creditor must disclose the amount of any monthly or other regular periodic payment of funds labeled "Monthly Advance," and include a statement that the funds will be paid to the consumer each month while the consumer remains in the home. *See* proposed § 226.33(c)(5)(i)(B). Finally, the creditor must disclose any amount made available to the consumer as discretionary cash advances in which the consumer controls the timing of advances. Comment 33(c)(5)–1 clarifies that the creditor must label this type of payment as a "Line of Credit," regardless of whether the reverse mortgage is structured as open-end or closed-end credit. *See* proposed § 226.33(c)(5)(i)(C). The disclosure must also include a statement that the funds will be available to the consumer at any time while the consumer remains in the home. The creditor must also disclose that the consumer may change the type of payments, if applicable. *See* proposed § 226.33(c)(5)(iii).

In some cases, the consumer may not have chosen the types of payments he wishes to receive at the time the disclosures are provided. In these cases, the creditor must follow the rules in § 226.33(c)(5)(ii) as discussed in comment 33(c)(5)–2. The creditor must disclose the maximum amount the consumer could receive in discretionary cash advances. The creditor must also state that the consumer may choose to take some or all of the funds in an initial advance or as a monthly or periodic payment, as applicable.

If the creditor does not provide the consumer with the option to receive funds as discretionary cash advances, the creditor must disclose the total amount the consumer may receive as an initial advance and state that the consumer may choose to take some or all of the funds in the form of a monthly or other periodic payment, if applicable. As discussed above in the Introduction to the section-by-section analysis to § 226.33, historically consumers have tended to take reverse mortgage proceeds as a line of credit. Because this has tended to be the most common consumer choice, the proposal would require creditors to disclose how much the consumer could get through discretionary advances. If a discretionary advance option is not available to the consumer, a disclosure of the total amount the consumer could get in an initial advance would provide the closest substitute. The Board requests comment on other approaches for disclosing how much the consumer could receive if the consumer has not chosen a payment type.

33(c)(6) Annual Percentage Rate

33(c)(6)(i) Open-End Annual Percentage Rate

Proposed § 226.33(c)(6)(i) is modeled after §§ 226.5b(c)(10) and 226.6(a)(2)(vi) and the associated commentary in the Board's August 2009 HELOC Proposal, which would implement TILA Section 127A(a)(1). *See* 74 FR 43428, 43472–43478 and 43501–43502, Aug. 26, 2009; 15 U.S.C. 1637a(a)(1). Accordingly, proposed § 226.33(c)(6)(i) would require disclosure of each periodic interest rate applicable to the reverse mortgage that may be used to compute the finance charge on an outstanding balance, expressed as an annual percentage rate (as determined by § 226.14(b)). The annual percentage rates would be required to be in at least 16-point type, except for: (1) any minimum or maximum annual percentage rates that may apply; and (2) any disclosure of rate changes set forth in the initial agreement that would not generally apply after the expiration of an introductory rate, such as a rate that would apply when an employee preferred rate is terminated because the borrower-employee leaves the creditor's employ.

For variable rate open-end reverse mortgages, proposed § 226.33(c)(6)(i)(A) would require disclosure of the fact that the annual percentage rate may change due to the variable-rate feature, using the term "variable rate." It would require an explanation of how the annual percentage rate will be determined by identifying the type of index used and the amount of any margin, and the frequency of changes in the annual percentage rate. It would also require disclosure of any rules relating to changes in the index value and the annual percentage rate and a statement of any limitations on changes in the annual percentage rate, including the minimum and maximum annual percentage rate that may be imposed. If no annual or other periodic limitations apply to changes in the annual percentage rate, the creditor would be required to disclose a statement that no annual limitation exists. In addition, the proposed provision specifies that a variable rate is considered accurate if it is a rate as of a specified date, and was in effect within the last 30 days before the disclosures are provided.

Finally, this proposed provision in § 226.33(c)(6)(i)(A) would require disclosure of the lowest and highest value of the index and margin in the past 15 years. The Board's August 2009 HELOC Proposal would require a disclosure of only the lowest and highest value of the index, not the index and margin. *See* 74 FR 43428, 43477, Aug. 26, 2009. The Board requests comment on whether the proposed reverse mortgage disclosure should show only the range of the index value.

If the initial rate is an introductory rate, proposed § 226.33(c)(6)(i)(B) would require the creditor to disclose the introductory rate along with the rate that would otherwise apply to the plan, and use the term "introductory" or "intro" in immediate proximity to the introductory rate. The creditor would also be required to disclose the time period during which the introductory rate will remain in effect and the rate that will apply after the introductory rate expires.

33(c)(6)(ii) Closed-End Annual Percentage Rate

Proposed § 226.33(c)(6)(ii)(A) is modeled after the annual percentage rate disclosure proposed by the Board in § 226.38(b) in the August 2009 Closed-End Mortgage Proposal, which would implement TILA Section 128(a)(4). *See* 74 FR 43232, 43296–43298, Aug. 26, 2009; 15 U.S.C. 1638(a)(4). It would require disclosure of the annual percentage rate, using that term, along with the description, "overall cost of this loan including interest and fees." The Board is not proposing to include the APR graph under proposed § 226.38(b)(2), the statement of the average prime offer rate under proposed § 226.38(b)(3) or the average per-period savings from a 1 percentage point reduction in the APR under § 226.38(b)(4). Comparisons to the average prime offer rate are not likely to be meaningful to consumers because reverse mortgages may have different pricing structures than closed-end mortgages. In addition, a statement about the per-period savings from a 1 percentage point reduction in the APR would not likely be meaningful because the consumer does not make regular monthly payments on a reverse mortgage.

In consumer testing conducted for the Board, a common question that consumers had was whether reverse mortgage interest rates were fixed or variable.[121] For this reason, proposed § 226.33(c)(6)(ii)(B) would require a disclosure of whether the rate is fixed, adjustable, or a step-rate. This proposal is based on proposed § 226.38(a)(3)(i) in the Board's August 2009 Closed-End Mortgage Proposal which would require a similar disclosure of a closed-end mortgage loan's rate type. Proposed comment 33(c)(6)(ii)(B)–1 would refer to proposed § 226.38(a)(3) for guidance on determining the rate type of the reverse mortgage.

Proposed § 226.33(c)(6)(ii)(C) is modeled after proposed §§ 226.38(e)(1) and (e)(2) in the August 2009 Closed-End Mortgage Proposal and would require, if the interest rate may increase after consummation, a description of the method used to calculate the interest rate and the frequency of interest rate adjustments. If the interest rate that applies at consummation is not based on the index and margin that will be used to make later interest rate adjustments, the description must include the time period when the initial interest rate expires. For a variable-rate mortgage, any limitations on the increase in the interest rate would have to be disclosed together with a statement of the maximum rate that may apply pursuant to such limitations during the transaction's term to maturity. To maintain consistency with the disclosures for open-end reverse mortgages, § 226.33(c)(6)(ii)(C) would require disclosure of the lowest and highest value of the index in the past 15 years. The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uniformed use of credit.

33(c)(6)(iii) Statement About Interest Accrual

Proposed § 226.33(c)(6)(iii) would require a statement that interest charges will be added to the loan balance each month (or other applicable period) and collected when the loan is due. In the consumer testing conducted for the Board, some consumers were initially unsure as to whether interest charges must be paid each month or are added to the loan balance. The proposed disclosure would clarify that interest charges accrue but are not payable until the reverse mortgage becomes due and payable. The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uniformed use of credit.

33(c)(7) Fees and Transactions Costs

The Board's August 2009 HELOC Proposal requires disclosure of a number of different fees and transaction costs that would apply to open-end reverse mortgages in the proposed disclosure table. However, for closed-end mortgages, the current rules do not require an itemization of fees in the segregated disclosures. In addition, the Board's August 2009 closed-end mortgage proposal would require only disclosure of the total settlement charges, but not an itemization, in the required disclosure table.

For reverse mortgages, however, current § 226.33(b)(3) requires an itemization of charges to the borrower. For this reason, and to maintain consistency between the closed-end and open-end reverse mortgage disclosures, proposed § 226.33(c)(7) would require disclosure of fees and transactions costs for all types of reverse mortgages. The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uniformed use of credit.

33(c)(7)(i) Fees Imposed by the Creditor and Third Parties to Consummate the Transaction or Open the Plan

Proposed § 226.33(c)(7)(i) is modeled after §§ 226.5b(c)(11) and 226.6(a)(2)(vii) and the associated commentary in the Board's August 2009 HELOC Proposal,

[121] *See* ICF Macro International, Inc., *Design and Testing of Truth in Lending Disclosures for Reverse Mortgages,* 9 (July 2010) available at <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20100816_Reverse_Mortgage_Report_(7–28)_(FINAL).pdf >.

which would implement TILA Sections 127A(a)(3) and (a)(4). *See* 74 FR 43428, 43478–43480 and 43502, Aug. 26, 2009; 15 U.S.C. 1637a(a)(3) and (a)(4). It would apply to open-end and closed-end reverse mortgages.

Proposed § 226.33(c)(7)(i)(A) would require a disclosure of the total of all one-time fees imposed by the creditor and any third parties to open the plan, stated as a dollar amount. For the open-end early disclosures only, if the exact total of one-time fees for account opening is not known at the time the disclosures are provided, a creditor would be required to provide the highest total of one-time account opening fees possible for the plan and that the costs may be "up to" that amount.

Proposed § 226.33(c)(7)(i)(B) would require an itemization of all one-time fees imposed by the creditor and any third parties to open the plan, stated as a dollar amount, and when such fees are payable. For the open-end early disclosures only, if the dollar amount of a fee is not known at the time the disclosures are provided, the creditor would be required to provide a range for the fee. For the open-end account-opening disclosures, the creditor would be required to provide the exact amounts of such fees. *See* proposed comment 33(c)(7)(i)–1.ii. (Creditors will know the amount of the fees at the time they make the open-end account-opening disclosures.) For the closed-end disclosures, creditors must make good faith estimates of the disclosures as required by § 226.19(a)(1) and must provide a final disclosure before consummation. *See* proposed § 226.33(d)(3).

33(c)(7)(ii) Fees Imposed by the Creditor for Availability of the Reverse Mortgage

Proposed § 226.33(c)(7)(ii) is modeled after §§ 226.5b(c)(12) and 226.6(a)(2)(viii) and the associated commentary in the Board's August 2009 HELOC Proposal. *See* 74 FR 43428, 43480–43481, 43499, Aug. 26, 2009. This proposed provision would apply to open-end and closed-end reverse mortgages. It would require disclosure of all monthly or other periodic fees that may be imposed by the creditor for the availability of the reverse mortgage, including any fee based on activity or inactivity; how frequently the fee will be imposed; and the annualized amount of the fee. It would also require disclosure of all costs and charges to the consumer that may be imposed by the creditor on a regular periodic basis as part of the reverse mortgage, such as a servicing fee or mortgage insurance premium. The proposed section would also require a disclosure labeled "Monthly Interest Charges" (or other applicable period) of the interest rate. In consumer testing conducted for the Board some consumers believed that interest charges would be payable on a monthly basis.[122] Therefore, the proposal would include monthly interest charges with other monthly charges to emphasize that interest charges, like other monthly fees, are added to the loan balance along with other charges.

33(e)(7)(iii) Fees Imposed by the Creditor for Early Termination of the Reverse Mortgage

Proposed § 226.33(c)(7)(iii) is modeled after §§ 226.5b(c)(13) and 226.6(a)(2)(ix) and the associated commentary in the Board's August 2009 HELOC Proposal. *See* 74 FR 43428, 43481, 43499, Aug. 26, 2009. This proposed provision would apply to open-end and closed-end reverse mortgages. It would require disclosure of any fee that may be imposed by the creditor if the consumer terminates the reverse mortgage, or prepays the obligation in full, prior to the scheduled maturity.

33(c)(7)(iv) Statement About Other Fees

Proposed § 226.33(c)(7)(iv) is modeled after §§ 226.5b(c)(14) and 226.6(a)(2)(xv) and the associated commentary in the Board's August 2009 HELOC Proposal. *See* 74 FR 43428, 43481–43482 and 43503, Aug. 26, 2009. This proposed provision would apply to open-end and closed-end reverse mortgages. It would require a statement that other fees may apply. For the early open-end disclosures, the creditor would be required to disclose either a statement that the consumer may receive, upon request, additional information about fees applicable to the plan, or if the additional information about fees is provided with the table, reference that the information is enclosed with the table. For closed-end and account-opening disclosures the creditor would be required to provide a reference to the reverse mortgage agreement.

33(c)(7)(v) Transaction Requirements

Proposed § 226.33(c)(7)(v) is modeled after §§ 226.5b(c)(16) and 226.6(a)(2)(xvii) and the associated commentary in the Board's August 2009 HELOC Proposal. *See* 74 FR 43428, 43482 and 43503, Aug. 26, 2009. It would require a disclosure of any limitations on the number of extensions of credit and the amount of credit that may be attained during any time period, as well as any minimum draw requirements. This proposed provision would apply to open-end and closed-end reverse mortgages. Proposed § 226.33(c)(7)(v) would not require the disclosure of any minimum outstanding balance because such a requirement is unlikely to apply to reverse mortgages. The Board requests comment on whether such requirements may apply to reverse mortgages and therefore should be disclosed.

33(c)(8) Loan Balance Growth

In place of the table of TALC rates currently required by § 226.33, proposed § 226.33(c)(8) requires a table that demonstrates how the reverse mortgage balance grows over time. For the reasons discussed above in this section-by-section analysis, this information is expressed as dollar amounts rather than as annualized loan cost rates. The creditor must provide three items of information: (1) The sum of all advances to and for the benefit of the consumer, including any payments that the consumer will receive from an annuity that the consumer purchases along with the reverse mortgage; (2) the sum of all costs and charges owed by the consumer, including the costs of any annuity the consumer purchases along with the reverse mortgage; and (3) the total amount the consumer would be required to repay. *See* proposed § 226.33(c)(8)(ii)(A)–(C). This information must be provided for each of three assumed loan periods of 1 year, 5 years, and 10 years.

The current TALC disclosure requires TALC rates based on three different property-value appreciation assumptions, but consumers in the Board's consumer testing found these disclosures confusing and unhelpful. Thus, the proposed loan balance table would not require disclosure based on varying appreciation rates (with the exception of reverse mortgages that include a shared equity or shared appreciation feature discussed below). The Board tested various alternatives in both dollar amount and graphical forms to attempt to show the impact that home price appreciation had on the cost of the reverse mortgage. Many consumers did not understand those disclosures and those who did found them not to be useful. In addition, many consumers did not understand that the time periods used on the TALC form were based on assumptions about their life expectancy. Consumers expressed a preference for figures based on standardized time

[122] *See* ICF Macro International, Inc., *Design and Testing of Truth in Lending Disclosures for Reverse Mortgages,* 25, 33 (July 2010) available at *http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20100816_Reverse_Mortgage_Report_(7–28)_(FINAL).pdf.*

periods such as one year, five years and ten years. The Board requests comment on whether other time periods would be more appropriate.

Annuities. Under TILA Section 138, the projected total cost of a reverse mortgage used to calculate the TALC rates includes "the costs of any associated annuity that the consumer elects or is required to purchase as part of the reverse mortgage transaction." 15 U.S.C. 1648. In addition, the payments to the consumer include "the annuity payments received by the consumer and financed from the proceeds of the loan, instead of the proceeds used to finance the annuity." 15 U.S.C. 1648. Proposed § 226.40(a) prohibits a creditor from requiring a consumer to purchase any financial or insurance product, including an annuity, as a condition of obtaining a reverse mortgage. Under the safe harbor for compliance in proposed § 226.40(a)(2), a creditor is deemed to comply with the prohibition on required purchases of financial or insurance products if, among other things, the reverse mortgage transaction is completed at least 10 calendar days before the purchase of another product. Accordingly, comment 33(c)(1)–2, which clarifies that annuity costs are a cost to the consumer, would be redesignated as comment 33(c)(8)–2 and revised to remove references to "required" purchases of an annuity. It would also clarify that the cost of an annuity purchased after the reverse mortgage transaction is complete, in accordance with the safe harbor in § 226.40(a)(2), would not be considered a cost to the consumer.

Similarly, payments from an annuity that the consumer purchases after the reverse mortgage transaction is complete, in accordance with the safe harbor, would not be required to be disclosed as the advances to the consumer. The Board believes that requiring disclosure of the cost of an annuity that the consumer will not be obligated to purchase until at least 10 days after the reverse mortgage transaction is complete would be impractical. A creditor may not know whether the consumer plans to purchase the annuity, and even if the consumer indicates intent to purchase an annuity, the consumer may decide not to do so. In addition, a disclosure that includes the cost of an annuity that the consumer is not obligated to purchase may confuse the consumer about whether the purchase is, in fact, optional and about the amount of the reverse mortgage payments the consumer will receive.

Conversely, if the consumer voluntarily purchases an annuity along with a reverse mortgage, and the creditor does not follow the safe harbor in § 226.40(a)(2), the amount paid by the consumer to purchase the annuity would be included as a cost to the consumer regardless of whether the annuity is purchased from the creditor or a third party. The examples used in the current commentary would be retained to clarify that this includes the cost of an annuity the creditor offers, arranges, or assists the consumer in purchasing, or that the creditor is aware that the consumer is purchasing as part of the transaction. In addition, the advances that the consumer will receive from the annuity must be disclosed as the advances to the consumer, rather than the proceeds used to finance the annuity. The Board requests comment on the circumstances under which the cost of, and payments from, an annuity should be included in the loan balance table in § 226.33(c)(8).

All costs and charges. Comment 33(c)(1)–1 would be redesignated as comment 33(c)(8)–1. This comment clarifies that all costs and charges to the consumer that are incurred in a reverse mortgage are included in the loan balance table whether or not the cost or charges are finance charges under § 226.4. Comment 33(c)(1)–3 would be redesignated as comment 33(c)(8)–3 and would clarify that costs incurred in connection with the sale or transfer of the property subject to the reverse mortgage are not included in the costs to the consumer. Comment 33(c)(2)–1 would be redesignated as comment 33(c)(8)–4 and would clarify that the disclosure of the amount advanced to the consumer should not reflect contingent payments in which a credit to the outstanding loan balance or payment to the consumer's estate is made upon the occurrence of an event, such as a "death benefit" payable if the consumer's death occurs within a certain period of time.

Limits on liability. Comment 33(c)(4)–1 would be redesignated as comment 33(c)(8)–7 and would clarify that a creditor would have to include any limitation on the consumer's liability, such as a nonrecourse limit or equity conservation agreement, in the disclosure of the amount owed by the consumer. The Board requests comment on whether the amount owed by the consumer should reflect such limitations on the consumer's liability since the proposed disclosures would not be based on any assumed home-value appreciation and thus may understate the consumer's eventual liability.

Net proceeds from sale of home. Comment 33(c)(4)–2 would be redesignated as comment 33(c)(8)–8 and would clarify that if the contract specifies that the consumer's liability will be limited to the "net proceeds" of the sale of the home, but does not specify a percentage for the "net proceeds" liability, for purposes of the disclosure of the amount the consumer will be required to repay under § 226.33(c)(8)(ii)(C), a creditor must assume that the costs associated with selling the property will equal 7 percent of the projected sale price. The Board requests comment on whether the 7 percent assumption is still appropriate. The Board also requests comment on whether any assumption for the "net proceeds" amount should be used, or whether, for simplicity, the total amount owed by the borrower should be shown as limited by the appraised value of the home.

Set-asides. Comment 33(c)(8)–9 would clarify that if the creditor sets aside a portion of the loan amount for the benefit of the consumer, such as for making required repairs to the dwelling, the creditor must treat the entire amount of the set-aside as advanced to the consumer. For example, if the creditor estimates of repairs will cost $1000 but sets aside $1500 (150% of the estimated cost of repairs), the entire $1500 amount of the repair set-aside is considered an advance for the benefit of the consumer. The Board requests comment on whether a different assumption should be used when disclosing the amount advanced to the consumer under a repair set-aside.

Assumptions used to calculate loan balance growth. Proposed § 226.33(c)(8)(i) requires creditors to base the disclosures of the loan balance growth on a number of assumptions. First, the creditor would have to base the loan balance growth table on the initial interest rate in effect at the time the disclosures are provided and assume that the consumer does not make any repayments during the term of the reverse mortgage. The creditor would also have to assume that all closing and other consumer costs are financed by the creditor unless the creditor and consumer have agreed otherwise. The Board requests comment on whether these or other assumptions should be used.

Amount the consumer will owe—shared equity or appreciation. In reverse mortgages without a shared appreciation or equity feature, the creditor would have to assume that the dwelling's value does not change. However, if the creditor is entitled by contract to any shared appreciation or equity, the creditor must assume the dwelling's value increases by 4 percent per year and include the shared appreciation in the disclosure of the total amount the consumer would be required to repay. Comment 33(c)(3)–1 would be redesignated as comment 33(c)(8)–5 and revised to clarify that any shared appreciation or equity that the creditor is entitled to receive pursuant to the legal obligation must be included in the amount the consumer will owe. Comment 33(c)(8)–6 clarifies that because the cost to the consumer must reflect the shared appreciation, the creditor must use the 4 percent appreciation assumption. The 4 percent appreciation assumption is currently used as the middle appreciation assumption in the TALC disclosure. The Board requests comment on whether a different appreciation assumption should be used, whether a uniform appreciation assumption should be used regardless of whether the reverse mortgage has a shared appreciation feature, or whether the shared appreciation feature should not be reflected in the total amount the consumer will owe and disclosed only under the separate disclosure proposed in § 226.33(c)(8)(iv).

Type of payments selected by consumer. The loan balance growth table would also be based on the type of payments selected by the consumer as disclosed in § 226.33(c)(5). In some cases, the consumer may have a portion of the loan amount available for discretionary cash advances, such for a line of credit. In these instances the creditor must make an assumption about how much the consumer will draw over time. Under the proposal, if the consumer has elected to receive an initial advance, periodic payments, or some combination of the two that accounts for 50 percent or more of the principal loan amount available to the consumer, the creditor must assume that the consumer takes no further advances. Otherwise, the creditor must assume that the entire available principal loan amount is advanced to the consumer at closing, or in the case of an open-end reverse mortgage when the consumer becomes obligated under the plan.

Comment 33(c)(8)–10.ii provides two examples. The first example assumes a reverse mortgage with a principal loan amount of $105,000 and creditor-finance closing costs of $5,000, leaving an available loan amount of $100,000. The consumer elects to take $25,000 in an initial advance and have $25,000 paid out in the form of regular monthly advances, for a total of $50,000. The consumer chooses to leave the remaining $50,000 in the line of credit. Because the initial advance and the monthly payments accounts for 50 percent of the available principal amount the creditor must assume that the consumer takes no advances from the line of credit. The second example assumes that the consumer elects to take $24,000 in an initial advance, have $25,000 paid in the form of regular monthly advances, and leave $51,000 in a line of credit. Because the initial advance and the monthly payments account for less than 50 percent of the principal loan amount, the creditor must assume that the consumer draws all $51,000 from the line of credit at closing.

In the consumer testing conducted for the Board, consumers were shown reverse mortgage disclosures that included an initial advance, monthly payments, and a line of credit. Consumers were shown disclosures that assumed hypothetical periodic advances from the line of credit and disclosures that assumed no advances from the line of credit. Consumers initially found a disclosure with a hypothetical line of credit draw to be confusing. They understood that the costs of the reverse mortgage would be higher if the consumer drew funds from the line of credit and did not find the hypothetical amounts to be meaningful.

In some cases however, the consumer may choose to have most of the reverse mortgage principal amount remain in a line of credit and take only a small initial advance or monthly payment. In these instances, a disclosure of total cost of the reverse mortgage may not provide the consumer with sufficient information to judge the eventual costs of future draws from a line of credit. The current disclosure of the table of TALC rates requires the creditor to assume in all cases that the consumer draws 50 percent of the line of credit at closing and obtains no additional extensions of credit. *See* Appendix K(b)(9). The Board's August 2009 HELOC Proposal would require the creditor to assume that the consumer draws the full credit line at account opening and does not obtain any additional extension of credit. 74 FR 43428, 43534, Aug. 26, 2009. In addition, under some reverse mortgages, including HECMs, the credit limit on the unused portion of a consumer's line of credit grows over time. The current disclosures do not take such as feature into account because they assume that the consumer takes only an initial line of credit draw. The proposed disclosures also would not reflect a credit line growth feature because consumers in consumer testing found a relatively simple hypothetical disclosure that assumed yearly $1500 draws on a line of credit to be confusing. The Board requests comment on whether a different assumption should be used for reverse mortgages that allows the consumer to take discretionary cash advances. For example, the Board requests comment on whether the creditor should assume that the consumer draws the entire amount at closing or at account opening in all cases, or whether the creditor should demonstrate a credit line growth feature.

Additional disclosures for shared equity or shared appreciation. Proposed § 226.33(c)(8) would also require additional disclosures for reverse mortgages with shared equity or shared appreciation features. The creditor would be required to disclose a statement and a numerical example based on a hypothetical $100,000 increase in the home's value under the heading, "Shared Equity" or "Shared Appreciation." Comment 33(c)(8)–11 provides an example. For example, if the creditor is entitled by contract to 25 percent of any appreciation in the value of the dwelling, the creditor may state, "This loan includes the Shared Appreciation Agreement, which means that we will be entitled to 25 percent of any profit made between when you accept the loan and the sale or refinance your home. *For example, if your home were worth $100,000 more when the loan becomes due than it is worth today, you would owe us an additional $25,000 on the loan.*" Proposed comment 33(c)(8)–11, emphasis added. In the consumer testing conducted for the Board, the numerical example based on a $100,000 hypothetical increase in the home's value clearly explained the potential costs to consumers. The Board requests comment on whether another hypothetical amount should be used that could better help consumers to understand the percentage calculation.

33(c)(9) Statements About Repayment Options

The proposed rule requires statements explaining the consumer's repayment options. Under proposed § 226.33(c)(9)(i), the creditor would be required to state that once the loan becomes due and payable, the consumer or consumer's heirs may pay the loan balance in full and keep the home, or sell the home and use the proceeds to pay off the loan. For nonrecourse transactions, the creditor would also be required to state that if the home sells for less than the consumer owes, the consumer will not be required to pay the difference and that if the home sells for more than the consumer owes, the difference will be given to the consumer or the consumer's heirs. *See* proposed § 226.33(c)(9)(ii)(A) and (B). If the reverse mortgage includes a shared equity or shared appreciation feature, the creditor must state that the creditor will deduct any shared appreciation or equity before paying the remaining funds to the consumer or the consumer's heirs. For transactions that allow recourse against the borrower, the creditor would be required to state that the consumer or the consumer's estate will be required to repay the entire amount of the loan, even if the home sells for less than the consumer owes. *See* proposed § 226.33(c)(9)(iii).

33(c)(10) Statements About Risks

Proposed § 226.33(c)(10) requires the creditor to provide a number of disclosures about risks and possible actions by the creditor. Under this provision, the creditor would have to state that the reverse mortgage will be secured by the consumer's home, implementing TILA Sections 127A(a)(5) (for open-end credit) and 128(a)(9) (for closed-end credit). 15 U.S.C. 1637a(a)(5); 15 U.S.C. 1638(a)(9). The creditor would also have to state the possible actions it could take, including foreclosing on the home and requiring the consumer to leave the home; stop making periodic payments to the consumer, if applicable; prohibit additional extensions of credit, if applicable; terminate the reverse mortgage and require payment of the outstanding balance in a single payment and impose fees on termination; and implement changes in the reverse mortgage.

The creditor would also be required to describe the conditions under which it could take these actions including, as applicable, if the consumer fails to maintain the collateral; if the consumer ceases to use the dwelling as his principal dwelling (including any residency time period that will be used to determine whether the dwelling is the consumer's principal dwelling, such as if the consumer is not in the home for 12 consecutive months); and the consumer's failure to pay property taxes or maintain homeowner's insurance. Comment 33(c)(10)–1 would clarify for open-end reverse mortgages that if changes may occur under § 226.5b(f)(3)(i)–(v) as proposed in the Board's August 2009 HELOC Proposal, a creditor must state that the creditor can make changes to the plan.[123]

33(c)(11) Additional Information and Web Site

Under proposed § 226.33(c)(11), creditors would be required to state that if the consumer does not understand any disclosure, the consumer should ask questions and include a statement that the consumer may obtain additional information at the Web site of the Federal Reserve Board and a reference to that Web site. The August 2009 Proposals for Closed-End Mortgages and HELOCs contain similar requirements. The Board proposes this rule pursuant to its authority in TILA Section 105(a) to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uniformed use of credit.

33(c)(12) Additional Early Disclosures for Open-End Reverse Mortgages

As discussed above, TILA Section 138, implemented by current § 226.31(a), requires HELOC or closed-end mortgage TILA disclosures to be provided for reverse mortgages, including the early HELOC disclosures (required by § 226.5b), the account-opening HELOC disclosures (required by § 226.6), and the closed-end disclosures (required by §§ 226.18 and 19). 15 U.S.C. 1648. While the Board is proposing to consolidate the disclosure content for reverse mortgages as much as possible into proposed § 226.33(c)(1) through (11), some of the content for each of the disclosures differs. Accordingly, proposed § 226.33(c)(12) through (14) would require specific disclosures for the open-end early reverse mortgage disclosures, the open-end account-opening disclosures, and the closed-end disclosures, respectively.

Comparison to the August 2009 HELOC Proposal

A number of disclosures applicable to HELOCs do not apply to, or are not meaningful for, reverse mortgages. A number of other required disclosures, however, are applicable to and meaningful for reverse mortgages and therefore are included in proposed § 226.33(c), which sets forth the required content for all reverse mortgage disclosures.

Disclosures required in § 226.33(c). First, the identification information and no-obligation statement in proposed § 226.5b(c)(1), (2), and (3) would be required by proposed § 226.33(c)(1), (2) and (4)(i) for reverse mortgages. Second, TILA Section 127A(a)(5) requires the creditor to disclose that the creditor will acquire a security interest in the consumer's dwelling and that loss of the dwelling may occur in the event of default. Proposed § 226.33(c)(4) and (c)(10) would implement this provision. 15 U.S.C. 1637a(a)(5).

TILA Section 127A(a)(8) requires a disclosure of HELOC repayment options and would be implemented by proposed § 226.5b(c)(9) under the Board's August 2009 HELOC Proposal. 15 U.S.C. 1637a(a)(8). The HELOC proposal contains a number of disclosures related to minimum payments during a draw period and repayment period for HELOCs that would not be applicable or meaningful to reverse mortgage consumers. For reverse mortgages, proposed § 226.33(c)(4), (c)(8), and (c)(9) would implement TILA Section 127A(a)(8). These provisions would require disclosures of reverse mortgage repayment options by describing the circumstances under which the reverse mortgage may become due and payable and providing the consumer with a table showing how much the consumer would be required to repay under different assumed loan terms.

TILA Section 127A(a)(9), implemented by current § 226.5b(d)(5)(iii), requires an example based on a $10,000 outstanding balance and a recent APR, showing the minimum periodic payments, the amount of any balloon payment, and the time it would take to repay the $10,000 outstanding balance if the consumer made only those payments and obtained no additional extensions of credit. 15 U.S.C. 1637a(a)(9). Proposed § 226.33(c)(8) would implement this provision with some modifications. Consumers make only one payment on a reverse mortgage and the timing of that single payment is generally unknown. Thus, for reverse mortgages, the disclosure contemplated by TILA Section 127A(a)(9) requires using not only a hypothetical balance of $10,000, but also an assumed loan period. Consequently, the information provided to consumers is likely to be less useful because it may not accurately reflect either the timing or the amounts of their eventual repayment on a reverse mortgage. Proposed § 226.33(c)(8) would require a disclosure of the loan balance growth over different assumed periods using the consumer's actual reverse mortgage rather than a hypothetical $10,000 balance. The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uniformed use of credit.

TILA Section 127A(a)(7)(A) provides that a creditor must disclose as part of the application disclosures a statement that, under certain conditions, the creditor may terminate the plan and require payment of the outstanding

[123] *See* 74 FR 43428, 43487–43489, Aug. 26, 2009.

balance in full in a single payment, prohibit additional extensions of credit and reduce the credit limit. 15 U.S.C. 1637a(a)(7)(A). In addition, current § 226.5b(d)(4)(i) requires that a creditor disclose as part of the application disclosures a statement that under certain conditions the creditor may impose fees upon termination or may implement certain changes in the plan as specified in the initial agreement. Proposed § 226.33(c)(10) would implement these provisions for reverse mortgages.

TILA Section 127A(a)(11) provides that if applicable, a creditor must provide as part of the application disclosures a statement that negative amortization may occur and that negative amortization increases the principal balance and reduces the consumer's equity in the dwelling. 15 U.S.C. 1637a(a)(11). Negative amortization is a key feature of a reverse mortgage, and TILA Section 127(A)(a)(11) would be implemented in proposed § 226.33(c)(4), (c)(8), and (c)(9) which explain the terms of the reverse mortgage, provide a table of the loan balance growth, and describe the consumer's repayment options, including the consequences for the consumer if the loan balance is greater than the home's value.

Proposed § 226.5b(c)(17) in the Board's August 2009 HELOC Proposal requires a disclosure of the credit limit. Under an open-end reverse mortgage, the overall credit limit, which will be based on the value of the dwelling, is not likely to be meaningful to the consumer as a standalone disclosure. Instead, proposed § 226.33(c)(5) would require a disclosure of the amounts and types of payments that the consumer may receive under the reverse mortgage.

Proposed § 226.5b(c)(20) and 5b(c)(21) in the Board's August 2009 HELOC Proposal requires statements about asking questions and a reference to the Board's Web site. These disclosures would be required for reverse mortgages by proposed § 226.33(c)(11).

Disclosures not applicable to reverse mortgages. For open-end credit secured by the consumer's principal dwelling in which the extension of credit may exceed the fair market value of the dwelling, TILA Section 127A(a)(13) requires a disclosure that the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and that the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges. 15 U.S.C. 1637a(a)(13). Section 226.5b(c)(8) of the August 2009 HELOC Proposal would implement this section. The disclosure about the tax deductibility of interest is likely to be confusing to reverse mortgage consumers and accordingly the Board proposes to use its authority under TILA Sections 105(a) and 105(f) to exempt reverse mortgages from the requirements of TILA Section 127A(a)(13). For reverse mortgages, interest accrues over time but the consumer does not make regular payments of interest or principal. The consumer generally would not be able to deduct interest payments until the reverse mortgage terminates and the consumer makes the single payment. In addition, in many cases neither the consumer nor the lender can be sure whether extensions of credit greater than the fair market value of the dwelling will eventually be made. The Board has considered that reverse mortgages are secured by the consumer's principal dwelling and are likely to be made for relatively large amounts, and in most cases the consumer will have the right of rescission. The Board also considered that reverse mortgage borrowers may lack financial sophistication relative to the complexity of the reverse mortgage, the importance of the credit and supporting property to the borrower, and whether the goal of consumer protection would be undermined by an exception. In addition, the Board considered the extent to which the requirement to provide the tax deductibility disclosure complicates, hinders, or makes more expensive the credit process for reverse mortgages. The Board believes that an exemption is warranted because the tax deductibility disclosure is unlikely to provide a meaningful benefit to reverse mortgage consumers.

Proposed § 226.5b(c)(18) in the Board's August 2009 HELOC Proposal requires disclosures regarding fixed-rate and fixed-term payment plans. Reverse mortgages may have either fixed or variable rates, and may have fixed-term options for making payments to the borrower, such as providing a monthly payment for a period of 10 years. However, the Board is unaware of any reverse mortgage plans that have fixed-rate or -term repayment plans, which, for example, would allow the consumer to draw funds that would accrue interest at a fixed rate for a period of time. Therefore the Board is not proposing to require such a disclosure for reverse mortgages, but the Board requests comment on whether reverse mortgages may have fixed-rate and -term payment plans.

Proposed § 226.5b(c)(19) in the Board's August 2009 HELOC Proposal requires disclosures about required credit insurance and debt cancellation and debt suspension coverage. As discussed below in the section-by-section analysis to § 226.40, the Board is proposing to prohibit creditors from conditioning a reverse mortgage on the purchase of any other financial or insurance product. Accordingly, the Board does not propose to require the disclosures about required credit insurance and debt cancellation and debt suspension coverage.

33(c)(12)(i) Statement Regarding Refund of Fees Under § 226.5b(e)

Proposed § 226.33(c)(12)(i), modeled on proposed § 226.5b(c)(5), requires a creditor to disclose in the table as part of the early open-end reverse mortgage disclosures a statement that the consumer may receive a refund of all fees paid, if the consumer notifies the creditor within three business days of receiving the early disclosures that the consumer does not want to open the plan. The proposed disclosure would be required if a creditor will impose fees on the plan prior to the expiration of the three-day period. *See* 74 FR 43428, 43461, August 26, 2009.

33(c)(12)(ii) Refund of Fees Under § 226.40(b)

As discussed in the section-by-section analysis to § 226.40(b) below, the Board is proposing to prohibit creditors from making a reverse mortgage unless the consumer has received independent counseling. In addition, the proposal would require creditors to refund all fees paid (except for the fee for counseling itself) if the consumer notifies the creditor within three business days of receiving the counseling that the consumer does not want the reverse mortgage. Proposed § 226.33(c)(12)(ii) requires a creditor to disclose in the table as part of the early open-end reverse mortgage disclosures a statement regarding the consumer's refund right after counseling.

33(c)(12)(iii) Changes to Disclosed Terms

TILA Section 127A(a)(6)(A) provides that creditors must disclose as part of the application disclosures a statement of the time by which the consumer must submit an application to obtain specific terms disclosed in the application disclosures and an identification of any disclosed term that is subject to change prior to opening the plan. 15 U.S.C. 1637a(a)(6)(A).

The Board's August 2009 HELOC Proposal implements this provision in proposed § 226.5b(c)(4). Proposed § 226.5b(c)(4)(i) requires an identification of any disclosed term subject to change prior to opening the plan. This statement would be required to be placed below the proposed early HELOC disclosure table. Proposed § 226.5b(c)(4)(ii) requires a statement that the consumer may receive a refund of all fees paid if a disclosed term changes (other than changes due to fluctuations in the index in a variable-rate plan) and the consumer elects not to open the account. This statement would be required to be inside the proposed early HELOC disclosure table. *See* 74 FR 43428, 43460–43461, August 26, 2009.

Proposed § 226.33(c)(12)(iii) requires the disclosure required by proposed § 226.5b(c)(4)(ii)—the statement regarding the consumer's right to a refund of fees if a disclosed term changes. For clarity, proposed § 226.33(c)(12)(i) through (c)(12)(iii) require disclosures that must be placed inside the proposed early open-end reverse mortgage table. Proposed § 226.33(c)(12)(iv), discussed below, would require disclosures that must be placed directly beneath the table.

33(c)(12)(iv) Statement About Refundability of Fees

Proposed § 226.33(c)(12)(iii) is modeled after § 226.5b(c)(4)(i) and (c)(22) and the associated commentary in the Board's August 2009 HELOC Proposal. *See* 74 FR 43428, 43460–43461, 43483–43484, August 26, 2009. It would require an identification of any disclosed term subject to change prior to opening the plan, a statement that the consumer may be entitled to a refund of all fees paid if the consumer decides not to open the plan, and a cross reference to the "Fees" section in the disclosure statement. Each of these disclosures would be required to be placed directly beneath the early open-end reverse mortgage disclosure table. *See* proposed § 226.33(d)(4)(vi).

33(c)(13) Additional Disclosures Before the First Transaction Under an Open-End Reverse Mortgage

Proposed § 226.33(c)(13) would require additional disclosures before the first transaction for open-end reverse mortgages. Its provisions are modeled after those in proposed § 226.6(a)(2) in the Board's August 2009 HELOC Proposal.

As discussed above in the section-by-section analysis under § 226.33(c)(12), a number of disclosures applicable to HELOCs are not applicable to, or are not meaningful for, reverse mortgages. A number of other required disclosures, however, are applicable to and meaningful for reverse mortgages and thus are included in proposed § 226.33(c), which sets forth the required content for all reverse mortgage disclosures.

Disclosures required in § 226.33(c). As discussed above in the section-by-section analysis to § 226.33(c)(12), the proposed disclosures required by § 226.33(c) include the disclosures that would be required by proposed § 226.6(a)(2)(i) (identification information); (a)(2)(ii) (security interest and risk to home); (a)(2)(iii) (possible actions by creditor); (a)(2)(v) (payment terms); (a)(2)(xvi) (negative amortization); (a)(2)(xviii) (credit limit); (a)(2)(xxiv) (no obligation statement); (a)(2)(xxv) (statement about asking questions); and (a)(2)(xxvi) (statement about Board's Web site).

Disclosure required by § 226.6. TILA Section 127(a)(2) provides that creditors must explain as part of the account-opening disclosures the method used to determine the balance to which rates are applied. 15 U.S.C. 1637(a)(2). Under the Board's 2009 HELOC Proposal, a creditor would be required to disclose below the account-opening table the name of the balance computation method used by the creditor for each feature of the account, along with a statement that an explanation of the method(s) is provided in the account agreement or disclosure statement. *See* 74 FR 43428, 43539, August 26, 2009 (proposed § 226.6(a)(2)(xxii)). In addition, proposed § 226.6(a)(4)(i)(D) would require creditors to explain the balance computation method in the account-opening agreement or other disclosure statement. *See* 74 FR 43428, 43506, August 26, 2009.

For reverse mortgages, the Board is not proposing to include a disclosure below the account-opening table of the name of the balance computation method along with a statement that an explanation of the method is provided in the account agreement or disclosure statement. Under the Board's HELOC proposal, however, reverse mortgage creditors would be required to explain the balance computation method in the account-opening agreement or other disclosure statement. The Board believes that because reverse mortgage consumers do not make regular payments to the lender, a disclosure of the balance computation method below the account-opening table would be unnecessary and could result in information overload for consumers. However, creditors would still be required to provide the information in the account-opening agreement or other disclosure statement.

Disclosures not applicable to reverse mortgages. Proposed § 226.33(c)(13) does not include the disclosures that would be required by § 226.6(a)(2)(iv) (tax implications); (a)(2)(xix) (statements about fixed-rate and -term payment plans); and (a)(2)(xx) (required insurance, debt cancellation or debt suspension coverage). For the reasons discussed in the section-by-section analysis to § 226.33(c)(12), these disclosures do not apply to, or are not meaningful for, reverse mortgages.

In addition, a number of other required account-opening disclosures for HELOCs are not relevant or meaningful in the reverse mortgage context. Proposed § 226.6(a)(2)(x), which requires disclosure of any late-payment fee, and proposed § 226.6(a)(2)(xiii), which requires disclosure of any returned-payment fee, do not apply to reverse mortgages because the consumer does not make regular payments. Also, TILA Section 127(a)(1), implemented by proposed § 226.6(a)(2)(xxi), provides that a creditor must disclose as part of the account-opening disclosures a statement of when finance charges begin to accrue, including an explanation of whether any time period exists within which any credit extended may be repaid without incurring a finance charge. 15 U.S.C. 1637(a)(1). However, disclosure of a grace period for reverse mortgages is not relevant or meaningful to consumers who are not making regular payments. For this reason the Board proposes to exercise its authority under TILA Sections 105(a) and 105(f) to exempt reverse mortgages from the requirement to state whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge. The Board has considered that reverse mortgages are secured by the consumer's principal dwelling and are likely to be made for relatively large amounts, and in most cases the consumer will have the right of rescission. The Board also considered that reverse mortgage borrowers may lack financial sophistication relative to the complexity of the reverse mortgage transaction, the importance of the credit and supporting property to the borrower and whether the goal of consumer protection would be undermined by an exception. The Board also considered the extent to which the requirement to provide the grace period disclosure complicates, hinders, or makes more expensive the credit process for reverse mortgages. The Board believes that an exemption is warranted because the grace period disclosure may be confusing to reverse mortgage consumers who are not making regular payments.

Disclosures required by § 226.33(c)(13). Proposed § 226.33(c)(13)(i) and (ii), modeled on proposed § 226.6(a)(2)(xii) and (a)(2)(xiv) in the Board's August 2009 HELOC Proposal, requires disclosure of transaction charges imposed for use of the reverse mortgage and any fees for failure to comply with transaction limitations. Proposed § 226.33(c)(13)(iii), modeled on proposed § 226.6(a)(2)(xxiii), implements TILA Section 127(a)(7) which requires creditors offering credit subject to § 226.5b to provide notices of billing rights at account opening. 15 U.S.C. 1637(a)(7). Proposed § 226.33(c)(13)(iv), modeled on proposed § 226.6(a)(2)(xxiv)(B) in the Board's August 2009 HELOC Proposal, requires a statement that the consumer should confirm the terms in the disclosure statement. The Board proposes this rule pursuant to its authority in TILA Section 105(a) to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uniformed use of credit.

33(c)(14) Additional Disclosures for Closed-End Reverse Mortgages

Proposed § 226.33(c)(14) would require additional disclosures for closed-end reverse mortgages. The proposed provisions are modeled on those in the Board's August 2009 Closed-End Mortgage Proposal.

Comparison to the August 2009 Closed-End Mortgage Proposal

The Board's August 2009 Closed-End Mortgage Proposal would create a new § 226.38 setting forth the content for closed-end mortgage disclosures, replacing the disclosures currently required by § 226.18. Many of the new and revised disclosures in proposed § 226.38 focus on disclosing possible changes to the consumer's monthly payment amount and thus would not apply to or be meaningful for reverse mortgage consumers. Accordingly, proposed § 226.33(c)(14) would not require some the disclosures required by proposed § 226.38. Other disclosures required by proposed § 226.38 would be required elsewhere in § 226.33(c) for reverse mortgages.

Disclosures required in § 226.33. Proposed § 226.38(a) would require a loan summary disclosure including information about the loan amount, term, type, and features. Some, but not all, of the items in the loan summary disclosure would be required (or would have parallel provisions) elsewhere under proposed § 226.33(c). For example, the loan amount, term, and type would be disclosed for all reverse mortgages under proposed § 226.33(c)(4), (c)(5), and (c)(6)(ii)(B). Proposed § 226.38(a) would also require a disclosure of total settlement charges. As discussed more fully above, proposed § 226.33(c)(7) would require a disclosure of costs to the consumer modeled more closely after the fee disclosure requirements for HELOCs.

Proposed § 226.38(c) would require an interest rate and payment summary for closed-end mortgages. Proposed § 226.33(c)(14) would not require the interest rate and payment summary, because for reverse mortgages there is only a single final payment and the timing of that payment is unknown and would have to be estimated. Instead, other provisions in proposed § 226.33(c) would require disclosure of the types of payments the consumer could receive (§ 226.33(c)(5)), a summary of the loan balance over time (§ 226.33(c)(8)), and descriptions of the consumer's repayment options (§ 226.33(c)(9)). These disclosures would give a reverse mortgage consumer relevant and meaningful information about the cost of the loan and the options for repaying the loan. In addition, proposed § 226.33(c)(6)(ii)(C), discussed above, would require information about the interest rate calculation.

Proposed § 226.38(d) would require disclosure of a section labeled, "Key Questions About Risk." This section would include information about rate increases, payment increases, prepayment penalties and other potentially risky features, such as disclosures about shared equity or shared appreciation features. The disclosures in proposed § 226.38(d) regarding payment increases, interest-only payments, negative amortization, balloon payments, demand features and no- or low-documentation loans either do not apply to reverse mortgages or would be more meaningful if disclosed in a different way. For example, the proposed disclosures of the loan balance growth in § 226.33(c)(8) and the consumer's repayment options in proposed § 226.33(c)(9) provide information about the negative amortization and balloon payment features of reverse mortgages that is tailored specifically for the reverse mortgage context. In addition, proposed § 226.33(c)(4) and (c)(10) would require disclosures about certain risks applicable to reverse mortgages. Proposed § 226.33(c)(8) would require disclosures about features such as shared equity or shared appreciation.

Proposed § 226.38(e) in the August 2009 Closed-End Mortgage Proposal would require disclosure of information about payments for closed-end mortgages. Proposed § 226.33(c) would include some, but not all of these disclosures. Proposed § 226.33(c) would not require disclosures of escrows for taxes and insurance or disclosures about mortgage insurance premiums; instead, § 226.33(c)(4)(iii) and (c)(10)(iii)(C) would require disclosures that the reverse mortgage consumer remains responsible for taxes and insurance.

Disclosures not required. Proposed § 226.38(f) and (g) in the August 2009 Closed-End Mortgage Proposal would require disclosures of additional information, most of which would be required for reverse mortgages by § 226.33(c). However, as discussed below, disclosures about tax deductibility of interest, and a statement that there is no guarantee the consumer may refinance, would not be required for reverse mortgages.

For closed-end credit secured by the consumer's principal dwelling in which the extension of credit may exceed the fair market value of the dwelling, TILA Section 128(a)(15) requires a disclosure that the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges. 15 U.S.C. 1638(a)(15). The disclosure about the tax deductibility of interest is likely to be confusing to reverse mortgage consumers and accordingly the Board proposes to use its authority under TILA Sections 105(a) and 105(f) to exempt reverse mortgages from the requirements of TILA Section 128(a)(15).

Although reverse mortgages accrue interest over time, because the consumer does not make regular payments on a reverse mortgage, the consumer generally would not be able to deduct interest payments until the reverse mortgage terminates and the consumer makes the single payment. In addition, in many cases neither the consumer nor the lender will know whether or not extensions of credit greater than the fair market value of the dwelling will eventually be made. The Board has considered that reverse mortgages are secured by the consumer's principal dwelling and are likely to be made for relatively large amounts, and in most cases the consumer will have the right of rescission. The Board also considered that reverse mortgage borrowers may lack financial sophistication relative to the complexity of the reverse mortgage transaction, the importance of the credit and supporting property to the borrower and whether the goal of consumer protection would be undermined by an exception. In addition, the Board considered the extent to which the requirement to provide the tax deductibility disclosure complicates, hinders, or makes more expensive the credit process for reverse mortgages. The Board believes that an exemption is warranted because the potential the tax deductibility disclosure is unlikely to provide a meaningful benefit to reverse mortgage consumers.

Proposed § 226.38(h) in the August 2009 Closed-End Proposal requires disclosures about credit insurance and debt cancellation and debt suspension coverage. Reverse mortgage consumers do not make regular payments and the death of the consumer is one of the events that causes a reverse mortgage to become due and payable. Reverse mortgage consumers do not appear to be offered credit insurance or debt cancellation or debt suspension coverage. Accordingly, the disclosures about credit insurance and debt cancellation and debt suspension coverage are not applicable and would not be required. The Board requests comment on whether credit insurance and debt cancellation and debt suspension coverage may be offered for reverse mortgages.

TILA Section 128(b)(2)(C) requires additional disclosures for loans secured by a dwelling in which the interest rate or payments may vary. 15 U.S.C. 1638(b)(2)(C). Specifically, creditors must provide "examples of adjustments to the regular required payment on the extension of credit based on the change in the interest rates specified by the contract for such extension of credit. Among the examples required is an example that reflects the maximum payment amount of the regular required payments on the extension of credit, based on the maximum interest rate allowed under the contract." TILA Section 128(b)(2)(C), 15 U.S.C. 1638(b)(2)(C). Creditors must provide these disclosures within three business days of receipt of the consumer's written application, as provided in TILA Section 128(b)(2)(A), implemented in § 226.19(a)(1)(i). TILA Section 128(b)(2)(C) provides that these examples must be in conspicuous type size and format and that the payment schedule be labeled "Payment Schedule: Payments Will Vary Based on Interest Rate Changes." Section 128(b)(2)(C) requires the Board to conduct consumer testing to determine the appropriate format for providing the disclosures to consumers so that the disclosures can be easily understood, including the fact that the initial regular payments are for a specific time period that will end on a certain date, that payments will adjust afterwards potentially to a higher amount, and that there is no guarantee that the borrower will be able to refinance to a lower amount. 15 U.S.C. 1638(b)(2)(C). The Board is implementing these requirements in an interim rule published elsewhere in today's **Federal Register**.

The requirements of TILA Section 128(b)(2)(C) are designed to ensure that consumers understand the potential for changes in their regular payment amount under a variable-rate mortgage and are aware that the borrower may not be able to refinance to a lower amount once such a change occurs. Armed with this information, consumers can determine whether payments on a variable-rate mortgage could become unaffordable. For reverse mortgages, however, these disclosures are unlikely to be meaningful and may cause confusion because consumers do not make regular payments to the lender. A disclosure that there is no guarantee that a consumer can refinance to lower their payment may be confusing to someone who is not making regular payments. Similarly, "examples of adjustments to the regular required payment" based on changes in the interest rate provides information that is less useful to reverse mortgage consumers than to consumers with traditional mortgages. This is because reverse mortgage consumers do not make a "regular required payment," but rather only a single final payment.

In addition, other factors, such as the consumer's longevity and changes to the home's value, may have significant effects on the total payment amount. In most cases, the total repayment amount will be subject to a nonrecourse limit, meaning that the consumer's maximum possible payment will be limited to the proceeds from the sale of the home (unless the consumer wishes to retain the home). Thus, even if a variable interest rate were to climb to its maximum possible amount, the effect may not be to increase the maximum *amount* the consumer could owe, but rather how quickly the consumer's loan balance reached an amount subject to the nonrecourse limit.

For these reasons, the proposed rule would not require disclosures of examples of changes to a reverse mortgage's final payment amount based on changes in the interest rate, or a statement that there is no guarantee the consumer can refinance to a lower payment. Under the Board's exception and exemption authorities under TILA Sections 105(a) and 105(f) the Board is proposing to make an exception to these requirements in TILA Section 128(b)(2)(C) for reverse mortgages. The Board believes that there is a potential for confusion or information overload from these disclosures and that an exception for reverse mortgages will effectuate the purposes of TILA of providing meaningful disclosure of credit terms to the consumer and assisting consumers in avoiding the uninformed use of credit. The Board has considered that reverse mortgages are secured by the consumer's principal dwelling and are likely to be made for relatively large amounts. The Board also considered that reverse mortgage borrowers may lack financial sophistication relative to the complexity of the reverse mortgage transaction, the importance of the credit and supporting property to the borrower, and whether the goal of consumer protection would be undermined by an exception.

In addition, the Board considered the extent to which the requirements complicate, hinder, or make more expensive the credit process for reverse mortgages. Given the importance of the reverse mortgage to the borrower and the fact that the disclosures would not provide a meaningful benefit in the form of useful information or protection, the Board believes that an exemption is warranted. As discussed below, the Board is proposing new disclosures to explain the total cost of a reverse mortgage more effectively pursuant to its authority in TILA Section 105(a) to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uniformed use of credit.

Disclosures required by § 226.33(c)(14). TILA Section 128 requires disclosure of the "finance charge," using that term; the "amount financed," using that term; the sum of the amount financed and the finance charge, termed the "total of payments;" and the number, amount, and due dates or periods of payments scheduled to repay the total of payments. 15 U.S.C. 1638(a)(2)(A), (a)(3), (a)(5), (a)(6), and (a)(8). Proposed § 226.33(c)(4)(v) and (c)(9) would implement the requirement to disclose the number and due dates of payments by requiring disclosure of when the reverse mortgage becomes due and payable and that the consumer must make a single payment to repay the reverse mortgage.

Proposed § 226.33(c)(14), modeled on proposed § 226.38(e)(5) in the August 2009 Closed-End Mortgage Proposal, would implement TILA Section 128 by requiring disclosure of the total payments, the finance charge, and the amount financed for all closed-end reverse mortgages. In the August 2009 Closed-End Mortgage Proposal, the Board proposed to use its exception authorities to make certain changes to the disclosures required by TILA Section 128. *See* 74 FR 43232, 43305–43309, Aug. 26, 2009; 15 U.S.C. 1638(a)(2)(A), (a)(3), (a)(5). The creditor would be required to disclose the total payments amount calculated based on the number and amount of scheduled payments in accordance with the requirements of § 226.18(g), together with a statement that the total payments is calculated on the assumption that market rates will not change, if applicable, and a statement of the estimated loan term. The creditor would be required to disclose the interest and settlement charges, using that term, calculated as the finance charge as required by § 226.4, expressed as a dollar figure, together with a brief statement that the interest and settlement charges amount represents part of the total payments amount. The interest and settlement charges would be treated as accurate if the amount disclosed is understated by no more than $100 or is greater than the amount required to be disclosed. The creditor would also be required to disclose the amount financed, using that term and expressed as a dollar figure, together with a brief statement that the interest and settlement charges and the amount financed are used to calculate the APR.

33(c)(15) Disclosures Provided Outside the Table

For closed-end reverse mortgages, proposed § 226.33(c)(15) would also require the creditor to comply with proposed § 226.38(j), which requires separate disclosures of the itemization of the amount financed, a statement of whether the consumer is entitled to a rebate of any finance charge in certain circumstances, late payment charges, a statement that the consumer may obtain property insurance from any insurer that is acceptable to the creditor, a statement of the consumer should refer to the contract for certain other information, and the statements whether or not a subsequent purchaser may be permitted to assume the obligation. Creditors would only need to provide these statements as applicable. As under the August 2009 Closed-End Mortgage Proposal, these disclosures would be required to be outside the reverse-mortgage disclosure table required by § 226.33(d).

For open-end credit, § 226.6(a)(3) through (a)(5) require certain disclosures to be provided at account-opening. Under the Board's August 2009 proposal, these disclosures would be required to be outside the table containing the disclosures under § 226.6.(a)(2). For reverse mortgages, proposed § 226.33(c)(15) would require the disclosures under § 226.6(a)(3) (disclosure of charges imposed as part of a home-equity plan), (a)(4) (disclosure of rates for home-equity plans), and (a)(5)(ii) through (iv) (disclosure of security interests, statement of billing rights, and possible creditor actions) as applicable. As under the August 2009 HELOC Proposal, these disclosures would be required to be outside the reverse-mortgage disclosure table required by § 226.33(d). As discussed above, the proposed reverse mortgage disclosures would not include disclosures regarding voluntary credit insurance, debt cancellation, or debt suspension, or additional information about fixed-rate and -term payment plans.

33(c)(16) Assumptions for Closed-End Disclosures

For creditors to calculate the total of payments, finance charge, and annual percentage rate for closed-end credit, they must use an assumed loan term. Current comment 17(c)(1)–14 provides guidance on assumptions creditors must use in making these disclosures for closed-end reverse mortgages. For clarity, the current comment would be moved into the regulation as proposed § 226.33(c)(16). The proposed provision and comment 33(c)(16)–1 would also clarify that the use of these rules does not, by itself, make the disclosures estimates. Thus, creditors using these rules for the disclosures required by proposed § 226.19(a)(2) would be able to comply with that section's limitation on using estimated disclosures.

Under proposed § 226.33(c)(16), if the reverse mortgage has a specified period for disbursements but repayment is due only upon the occurrence of a future event such as the death of the consumer, the creditor must assume that disbursements will be made until they are scheduled to end. The creditor must assume repayment will occur when disbursements end (or within a period following the final disbursement which is not longer than the regular interval between disbursements). This assumption should be used even though repayment may occur before or after the disbursements are scheduled to end.

For example, if the reverse mortgage will provide the consumer with monthly payments for a period of 10 years, the creditor must assume that payments continue for 10 years and that repayment occurs at the end of that time. This assumption must be used even though the consumer may still be living in the home at the end of 10 years and may not actually repay the reverse mortgage at that time.

If the reverse mortgage has neither a specified period for disbursements nor a specified repayment date, and these terms will be determined solely by reference to future events including the consumer's death, the creditor may assume that the disbursements will end upon the consumer's death (estimated by using actuarial tables, for example). The creditor may assume that repayment will be required at the same time as the consumer's death (or within a period following the date of the final disbursement which is not longer than the regular interval for disbursements). Alternatively, the creditor may base the disclosures upon another future event it estimates will be most likely to occur first. (If terms will be determined by reference to future events which do not include the consumer's death, the creditor must base the disclosures upon the occurrence of the event estimated to be most likely to occur first.) For example, if the consumer is scheduled to receive monthly payments for as long as the consumer remains in the home, the creditor must assume that disbursements end and repayment occurs either at the consumer's life expectancy, or another future event the creditor estimates will be most likely to occur first.

In making the disclosures, the creditor must assume that all disbursements and accrued interest will be paid by the consumer. For example, if the note has a nonrecourse provision providing that the consumer is not obligated for an amount greater than the value of the house, the creditor must nonetheless assume that the full amount to be disbursed will be repaid. The Board requests comment on whether other assumptions should be used in making the disclosures required by § 226.33(c)(14), or whether other clarifications about how to make these disclosures for reverse mortgages would be beneficial. As discussed below, the Board also requests comment on whether retaining the table of life expectancies (updated to current figures) in Appendix L would be useful in determining the total of payments, annual percentage rate, and finance charge under proposed § 226.33(c)(14). In addition, a borrower's age may be calculated in different ways. In some cases, the borrower's age is based on the borrower's *nearest* birthday (even if that birthday is in the future) rather than on the borrower's last birthday. For example, under the first method someone born on January 1, 1930 would be considered to be 81 years old on

September 1, 2010 because the borrower is nearer to his next birthday than his last birthday. Under the second method, the borrower would not be considered to be 81 years old until January 1, 2011. The Board requests comment on whether to adopt a uniform assumption for determining the consumer's age and, if so, which method to use.

33(d) Special Disclosure Requirements for Reverse Mortgages

Proposed § 226.33(d) would provide special disclosure requirements for reverse mortgages in addition to those in § 226.31. Proposed § 226.33(d)(1) would require the open-end early reverse-mortgage disclosures be provided at the earlier of three business days after application or three business days before the first transaction under the plan. The timing requirement for the open-end early reverse mortgage disclosures would differ slightly from the timing for the early HELOC disclosures under the Board's August 2009 HELOC Proposal. Under the HELOC Proposal, creditors would be required to provide the parallel disclosures under § 226.5b not later than account opening or three business days following receipt of the consumer's application, whichever is earlier. However, for reverse mortgages, TILA Section 138 requires that the open-end reverse-mortgage-specific disclosures be provided at least three business days before the first transaction under the plan. *See* current § 226.31(c)(2); 15 U.S.C. 1648.

For the account-opening open-end reverse mortgage disclosures, proposed § 226.33(d)(2) would require that the disclosures be provided to the consumer at least three business days before the first transaction under the plan. As discussed above, TILA Section 127(a) and current § 226.5(b)(1) require the HELOC account-opening disclosures be provided before the first transaction under the plan. 15 U.S.C. 1637. For reverse mortgages however, TILA Section 138 requires disclosures be provided at least three business days before the first transaction under an open-end reverse mortgage plan. 15 U.S.C. 1648. Because the proposal combines the HELOC disclosures with the reverse mortgage specific disclosures, only one timing rule may apply. The proposal follows the timing requirements that are specific to reverse mortgages. Reverse mortgages are complex transactions and the Board believes that consumers would benefit from receiving open-end disclosures at least three business days before becoming obligated on the plan so that they have sufficient time to review and contemplate the disclosures. The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uniformed use of credit. 15 U.S.C. 1604(a).

For closed-end reverse mortgages, TILA Section 128(b)(2) requires creditors to provide good faith estimates of the closed-end TILA disclosure within three business days after application and at least seven business days before consummation, and before the consumer has paid a fee other than a fee for obtaining a credit history. If subsequent events cause changes to the APR that exceed certain tolerances, the creditor must provide a corrected disclosure that the consumer must receive at least three business days before consummation. 15 U.S.C. 1638(b)(2). TILA Section 138 requires that reverse mortgage disclosures be provided at least three business days before closing. 15 U.S.C. 1648. Proposed § 226.33(d)(3) would require creditors to provide the disclosures required by § 226.33(c) for closed-end reverse mortgages in accordance with the rules in § 226.19(a). Since § 226.19(a), as proposed in the 2009 Closed-End Mortgage Proposal, requires the TILA good faith estimates to be provided at least 7 business days before closing, and any required re-disclosures to be provided at least three business days before closing, the timing requirements in proposed § 226.19(a) would satisfy the timing requirements of both TILA Section 128 and Section 138.

In addition, § 226.19(a) permits consumers to waive the seven- and three-day waiting periods for a *bona fide* personal financial emergency, implementing TILA Section 128(b)(2)(F). 15 U.S.C. 1638(b)(2)(F). These waiver provisions would also apply to the closed-end reverse mortgage disclosures required by proposed § 226.33(d)(3). TILA Section 138 does not explicitly provide for such a waiver for the reverse-mortgage-specific disclosures. However, the Board believes that it would be impractical for creditors and consumers to allow waivers for the waiting periods for some parts of the reverse mortgages disclosures and not others, or to allow only partial waivers of the waiting periods. The Board also believes that the benefits to reverse mortgage consumers of allowing them to waive the disclosure waiting periods for *bona fide* personal financial emergencies outweigh the need to have the extra time to review the disclosures in those cases. Accordingly, the Board proposes to apply the waiver rules in § 226.19(a) to the closed-end reverse mortgage disclosures. The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments to the statute to carry out its purposes and facilitate compliance with TILA. 15 U.S.C. 1604(a).

Section 226.19(a), as proposed in the Board's 2009 Closed-End Mortgage proposal, would also limit creditors' use of estimates in making final TILA disclosures. As a result of applying the rules in proposed § 226.19(a) to closed-end reverse mortgage disclosures, this proposal would also limit the use of estimates in the same manner. As discussed in the section-by-section analysis to § 226.33(c)(16) above, while creditors must use certain assumptions in § 226.33(c)(16) in making closed-end reverse mortgage disclosures, use of those assumptions would not, by themselves, make the disclosures estimates. *See* proposed comment 33(c)(16)–1. Thus, creditors would be able to comply with proposed § 226.19(a). The Board requests comment, however, on whether there are other disclosures that creditors would need to estimate in final closed-end reverse mortgage disclosures.

Proposed § 226.33(d)(4) would require the disclosures in §§ 226.33(c)(3) through (c)(10), (c)(12)(i), (c)(12)(ii), (c)(12)(iii), (c)(13)(i), (c)(13)(ii), and (c)(14) be provided in the form of a table with headings, content and format substantially similar to the model forms in Appendix K. It would also require certain information to be placed directly above the table, other information to be placed directly below the table and limit the information that could be within the table. It would also require that certain information be disclosed in bold text. For closed-end reverse mortgages it would also require that the APR be more conspicuous than other required disclosures, as required by TILA Section 122, and be in at least 16 point font. 15 U.S.C. 1632. Proposed § 226.33(d)(5), modeled after proposed §§ 226.5b(b)(3) and 6(a)(1)(iv), would provide rules for disclosure of fees based on a percentage of another amount.

33(e) Reverse Mortgage Advertising

Overview

Currently, advertisements for reverse mortgages are subject to general advertising requirements under § 226.16, for open-end credit, or § 226.24, for closed-end credit. Board staff extensively reviewed reverse mortgage advertisements, which generally focused on special features of reverse mortgages, such as the fact that payments of principal and interest are not required. As a result, the Board proposes additional advertising requirements for reverse mortgages.

The Board proposes to require that a reverse mortgage advertisement disclose clarifying information if the advertisement contains one or more of the seven following types of statements: (1) A reverse mortgage is a "government benefit"; (2) a reverse mortgage provides payments "for life" or a consumer need not repay a reverse mortgage "during your lifetime"; (3) a consumer "cannot lose" or there is "no risk" to a consumer's home with a reverse mortgage; (4) a consumer or a consumer's heirs "cannot owe" or will "never repay" more than the value of the consumer's home; (5) payments are not required for a reverse mortgage; (6) government fee limits apply to a reverse mortgage; or (7) a reverse mortgage does not affect a consumer's eligibility for or benefits under a government program. The Board also proposes to require that a reverse mortgage advertisement that refers to housing or credit counseling state a telephone number and Internet Web site for housing counseling resources maintained by HUD. The proposed requirements apply to advertisements for both open-end and closed-end reverse mortgages.

Authority

TILA Section 105(a) provides the Board with general authority to prescribe regulations to carry out TILA's purposes, which include ensuring meaningful disclosure of credit terms so that consumers will be able to compare available credit terms and avoid the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a). TILA Section 147(a) authorizes the Board to require by regulation that an advertisement for open-end credit secured by a consumer's principal dwelling that sets forth a specific plan term clearly and conspicuously disclose any information the Board prescribes, in addition to the credit term information set forth in TILA Section 147(a)(1)–(3) (as implemented in § 226.16(d)). 15 U.S.C. 1665b(a).

The Board proposes to use its general authority under TILA Section 105(a) and, for open-end reverse mortgage advertisements, its authority under TILA Section 147 to require that a reverse mortgage advertisement disclose clarifying information if the advertisement contains any of seven types of statements.[124] The Board also proposes to use its authority under TILA Sections 105(a) and 147 to require that an advertisement provide a telephone number and Internet Web site for HUD's housing counseling resources if the advertisement contains a reference to housing or credit counseling. The foregoing information would be helpful to consumers considering a reverse mortgage, and requiring its inclusion would promote the informed use of credit.

TILA Section 122 authorizes the Board to require that information be disclosed in a clear and conspicuous manner. 15 U.S.C. 1632. Pursuant to the Board's authority under TILA Section 122, information required to accompany a statement that triggers the disclosure requirement (a triggering statement) must be clearly and conspicuously disclosed.

Research and Outreach

The Board's staff extensively reviewed reverse mortgage advertising copy in developing the proposed provisions regarding reverse mortgage advertising. Board staff also considered a report by the GAO regarding its review of reverse mortgage marketing materials and related consultations with Federal and state banking regulators and other parties.[125] In addition, Board staff considered the Proposed Reverse Mortgage Guidance published by the FFIEC, and the comments received on this proposed guidance, as well as the FFIEC's Final Reverse Mortgage Guidance.[126] Board staff also consulted with Federal Trade Commission staff to identify problems connected with advertisements for reverse mortgages, as well as areas where reverse mortgage advertising disclosures could be improved.

Through this research and outreach effort, Board staff identified eight types of statements that warrant a requirement to provide clarifying information. These statements are discussed in detail below. The Board solicits comment on the proposed requirements for reverse mortgage advertisements.

33(e)(1) Scope

Proposed § 226.33(e) applies to all advertisements for reverse mortgages. The Board's consumer testing has found that consumers find it difficult to understand reverse mortgages. The reverse mortgage advertisements Board staff reviewed generally focused on special features of reverse mortgages, such as the fact that payments of principal and interest are not required.

The proposed requirements supplement, rather than replace, general advertising requirements for open-end or closed-end credit transactions under Subpart B or Subpart C of Regulation Z, respectively. This approach is consistent with § 226.31(a), which provides that the requirements and limitations of Subpart E of Regulation Z, including requirements and limitations for reverse mortgages, are in addition to requirements contained in other subparts of Part 226.

Proposed § 226.33(e)(1) provides that the requirements of proposed § 226.33(e) apply to any advertisement for a reverse mortgage, including promotional materials that accompany applications. Proposed comment 33(e)(1)–1 states that the requirements of proposed § 226.33(e) apply to both open-end and closed-end reverse mortgages. Proposed comment 33(e)(1)–1 also states that the requirements and limitations of proposed § 226.33(e) are in addition to those contained in other subparts, including advertising requirements under § 226.16 in Subpart B or § 226.24 in Subpart C, as applicable, and contains a cross-reference to § 226.31(a).

33(e)(2) Clear and Conspicuous Standard

Reverse mortgage advertisements currently are subject to the clear and conspicuous standard for open-end or closed-end advertisements set forth in § 226.16 in Subpart B or § 226.24 in Subpart C, respectively. Proposed § 226.33(e)(2) provides that disclosures required for reverse mortgage advertisements must be made clearly and conspicuously. Proposed comment 33(e)(2)–1 clarifies that advertisements for reverse mortgages are subject to the general "clear and conspicuous" standard for Subpart B or Subpart C, as applicable. Proposed comment 33(e)(2)–1 contains a cross-reference to proposed comment 33(e)(1)–1, which in turn refers to § 226.31(a), discussed above.

Proposed comment 33(e)(2)–1 clarifies that proposed § 226.33(e) prescribes no specific rules for the format of required disclosures, other than the following requirements: (1) the disclosures required by proposed § 226.33(e)(3)–(9) must be made with equal prominence and in close proximity to each triggering statement; and (2) the disclosure required by proposed § 226.33(e)(10) must be at least as conspicuous as any

[124] Most reverse mortgages are lines of credit, which are open-end credit transactions. *See* U.S. Government Accountability Office, GAO–09–606 at 8.

[125] *Id.*

[126] *See* Proposed Reverse Mortgage Guidance, 74 FR 66652, Dec. 16, 2009; Final Reverse Mortgage Guidance, 75 FR 50801. Aug. 17, 2010.

use of the triggering statement. Proposed comment 33(e)(2)–1 clarifies further that required statements need not be printed in a certain type size and need not appear in any particular place in the advertisement, except as necessary to comply with the foregoing requirements regarding prominence, proximity, and conspicuousness.

Proposed comment 33(e)(2)–2 states that information required to be disclosed under proposed § 226.33(e) that is in the same type size as the triggering statement is deemed to be equally prominent with such statement. Proposed comment 33(e)(2)–2 states further that if a disclosure required by proposed § 226.33(e) is made with greater prominence than the triggering statement, the equal prominence requirement is satisfied. In addition, proposed comment 33(e)(2)–2 states that information required to be disclosed under proposed § 226.33(e) that is immediately next to or directly above or below a triggering statement, without any intervening text or graphical displays and not in a footnote, is deemed to be closely proximate to such statement. Proposed comments 33(e)(2)–3, –4, and –5 clarify that, in determining whether required disclosures in an Internet, televised, or oral advertisement for a reverse mortgage are made clearly and conspicuously for purposes of proposed § 226.33(e)(2), creditors may rely on comments 16–3, –4, and –5 for open-end reverse mortgages, and comments 24(b)–3, –4, and –5 for closed-end reverse mortgages.

33(e)(3) Need To Repay Loan

Some advertisements state that a reverse mortgage is a "government benefit" or other government aid, without indicating that a reverse mortgage is a loan that must be repaid. Reverse mortgages are complex transactions, and consumers do not necessarily know how a reverse mortgage can enable a consumer to receive, rather than make, periodic payments. For example, some of the consumers who participated in the Board's consumer testing did not know at the outset that a reverse mortgage is a loan that must be repaid. A reference to government aid may compound many consumers' confusion regarding how reverse mortgages operate.

The Board believes that a statement that a reverse mortgage is a "government benefit" or other aid from a government entity may mislead a consumer to believe that a reverse mortgage is government assistance that the consumer need not repay. Therefore, the Board proposes to provide that such a statement in a reverse mortgage advertisement triggers a requirement to disclose clarifying information.

Proposed § 226.33(e)(3) provides that if an advertisement states that a reverse mortgage is a "government benefit" or other aid provided by any Federal, state, or local government entity, each such statement must be accompanied by an equally prominent and closely proximate statement of the fact that a reverse mortgage is a loan that must be repaid. The proposed disclosures would reduce consumers' confusion regarding the nature of a reverse mortgage likely to result from a statement that a reverse mortgage is government aid.

Proposed comment 33(e)(3)–1 provides examples illustrating how an advertisement that states that a reverse mortgage is aid provided by a government entity may clearly and conspicuously disclose that a reverse mortgage is a loan that must be repaid. One such example is the following statement: "You are eligible for benefits under the government's Home Equity Conversion Mortgage program. A reverse mortgage under the program is a loan that you must repay."

Proposed comment 33(e)(3)–2 clarifies that an advertisement may not state that a reverse mortgage is a "government benefit" unless the reverse mortgage is associated with a government program, such as HUD's HECM program. The comment further clarifies that if a reverse mortgage is associated with a government program, then an advertisement may contain a statement that a reverse mortgage is a government benefit; however, the statement must be accompanied by a statement that a reverse mortgage is a loan that must be repaid, as illustrated in the examples provided in comment 33(e)(3)–1. Finally, proposed comment 33(e)(3)–2 notes that reverse mortgage advertisements are subject to the prohibitions in proposed § 226.16(d)(9), for open-end reverse mortgages, and § 226.24(*i*)(3), for closed-end reverse mortgages, on misrepresentations that a mortgage is endorsed or sponsored by the government. The comment clarifies that an advertisement with this type of misrepresentation will violate TILA regardless of whether a statement that the reverse mortgage is a loan that must be repaid accompanies the misrepresentation.

Proposed comment 33(e)(3)–3 clarifies that a statement that a reverse mortgage is a "government-supported loan" or a "government loan program" or is a loan insured, authorized, developed, created, or otherwise sponsored or endorsed by a government entity does not trigger a requirement to disclose clarifying information. Such statements make clear that a reverse mortgage is a loan. Proposed comment 33(e)(3)–3 is consistent with § 226.24(*i*)(3), which allows statements regarding government endorsement or sponsorship if an advertised loan program in fact is endorsed or sponsored by a government entity. Proposed comment 33(e)(3)–3 also provides examples of statements that do not trigger a requirement to disclose clarifying information under proposed § 226.33(e)(3), including the following example: "A Home Equity Conversion Mortgage is a loan insured by the U.S. Department of Housing and Urban Development."

Proposed comment 33(e)(3)–4 clarifies that a reference to benefits or other aid through a government program unrelated to reverse mortgages does not trigger the requirement to disclose clarifying information. Proposed comment 33(e)(3)–4 clarifies further that using the term "benefit" to mean "advantage" does not trigger the requirement to disclose clarifying information. The proposed comment also provides examples that illustrate uses of the term "benefit" that do not trigger a requirement to disclose clarifying information under proposed § 226.33(e)(3), including the following: "A reverse mortgage does not affect your Social Security benefits." (Proposed comment 33(e)(3)–4 clarifies, however, that the foregoing statement regarding Social Security benefits triggers a requirement under proposed § 226.33(e)(9) to disclose that a reverse mortgage may affect a consumer's benefits under some other government programs, as discussed below in the section-by-section analysis of § 226.33(e)(9).)

33(e)(4) Events That End Loan Term

Some advertisements state that a reverse mortgage provides payments or access to a line of credit throughout a consumer's lifetime. However, a consumer may outlive a credit line if home equity is exhausted and payments under the term option do not continue beyond a specified term. A statement that a reverse mortgage provides payments throughout a consumer's lifetime is partially true where a consumer chooses a HECM program that provides payments as long as a consumer lives in the home (tenure option), but relatively few HECM consumers choose the tenure option.[127] And even with the tenure option, an

[127] In 2008, 89% of consumers with a HECM chose the line of credit option and an additional 6% chose the line of credit option combined with either the tenure option or the option for a specified term. *See* U.S. Government Accountability Office, GAO–09–606 at 8.

event other than a consumer's death may cause a reverse mortgage to become due, including sale of the home and failure by the consumer to use the home as a principal residence, to maintain the home in good repair, or to pay property taxes or insurance premiums. Many participants in the Board's consumer testing were surprised to learn that such events may cause a reverse mortgage to become due.

Other advertisements state that a consumer need not repay a reverse mortgage during the consumer's lifetime. As discussed above, however, several events other than a consumer's death may cause a reverse mortgage to become due.

The Board believes that the foregoing statements in an advertisement may mislead a consumer to believe that he or she will receive payments or have access to a line of credit, or need not repay, a reverse mortgage until death. The Board therefore proposes to require that such statements be accompanied by a clarifying disclosure of circumstances that may result in the termination of payments or of access to a line of credit, or repayment being required, for a reverse mortgage.

Proposed § 226.33(e)(4) requires that equally prominent and closely proximate clarifying information accompany each statement in an advertisement that a reverse mortgage provides payments "for life" or that a consumer need not repay a reverse mortgage "during your lifetime" or another statement that payments or access to a line of credit for a reverse mortgage or the term of a reverse mortgage will continue throughout a consumer's lifetime. Specifically, proposed § 226.33(e)(4) provides that the advertisement must disclose that in the following cases, payments or access to a line of credit may end or repayment may be required during the consumer's lifetime: If the consumer (1) sells the home or (2) lives elsewhere for longer than allowed by the loan agreement. The foregoing disclosure is intended to address the potentially misleading effects of a statement that payments or access to a line of credit continue throughout a consumer's lifetime or that a consumer need not repay a reverse mortgage during the consumer's lifetime.

A reverse mortgage may become due in other circumstances, such as if a consumer does not pay property taxes or insurance premiums or does not maintain the home. The Board is concerned that requiring advertisements to include many examples of such circumstances could contribute to information overload, however. For that reason, the Board proposes to limit the required disclosure of clarifying information to the two circumstances of selling the home and living elsewhere for longer than a specified period of time. At the same time, the Board believes that clearly and conspicuously disclosing more than two events that cause a reverse mortgage to end may be possible. Therefore, reverse mortgage advertisements may state more than two such examples under the Board's proposal, as discussed below.

The examples of selling of the home and living elsewhere for longer than a specified period of time are particularly relevant to the consumers to whom reverse mortgages typically are advertised. Generally aged 62 or older, these consumers may be more likely than younger consumers to need to live in an assisted living facility, with relatives, or someplace other than their home for health reasons. Consequently, proposed § 226.33(e)(4) requires that an advertisement include these specific examples, if applicable, in the disclosure triggered by a statement that a reverse mortgage provides payments "for life" or that a consumer need not repay a reverse mortgage "during your lifetime" or by another statement that a reverse mortgage will continue throughout a consumer's lifetime.

Proposed comment 33(e)(4)–1 provides examples that illustrate how an advertisement may disclose the clarifying information required by proposed § 226.33(e)(4), including the following example: "You get payments for as long as you live, except that payments may end sooner in some circumstances. For example, you do not get payments for as long as you live if you sell your home or live somewhere else for longer than the loan agreement allows." Proposed comment 33(e)(4)–2 states that the disclosures required by proposed § 226.33(e)(4)(A) and (B) need be made only if applicable.

Proposed comment 33(e)(4)–3 states that proposed § 226.33(e)(4) does not require the use of a particular format in providing the required disclosures, other than requiring that they be equally prominent with and in close proximity to each triggering statement. Proposed comment 33(e)(4)–3 also clarifies that an advertisement need not make the required disclosures in a single sentence and may make the required disclosures, for example, using a list format. Further, proposed comment 33(e)(4)–3 states that an advertisement may provide the required disclosures in any order. Proposed comment 33(e)(4)–4 states that an advertisement for a reverse mortgage may state additional circumstances in which a reverse mortgage will end during a consumer's lifetime (for example, where a consumer chooses to receive payments for a specific time period), but must not obscure the required disclosures.

33(e)(5) Risk of Foreclosure

Some advertisements state that, with a reverse mortgage, a consumer cannot lose his or her home or that there is no risk to a consumer's home. Principal and interest payments are not required with a reverse mortgage, but foreclosure nevertheless may occur. Some participants in the Board's consumer testing were surprised that a consumer's home is at risk with a reverse mortgage. Statements that a reverse mortgage poses no risk to a consumer's home compounds some consumers' lack of understanding that a reverse mortgage is a loan secured by a consumer's home.

The Board believes that a statement that a consumer cannot lose his or her home or that there is no risk to a consumer's home may mislead a consumer to believe that foreclosure of a reverse mortgage cannot occur. The Board therefore proposes to provide that such statement triggers a requirement to disclose clarifying information. Proposed § 226.33(e)(5) provides that if an advertisement states that a consumer "cannot lose" or that there is "no risk" to the consumer's home or otherwise states that foreclosure cannot occur if the consumer (1) lives somewhere other than the dwelling longer than allowed by the loan agreement or (2) does not pay property taxes or insurance premiums. The foregoing disclosures clarify a statement that a reverse mortgage poses no risk to a consumer's home.

Of course, foreclosure may result from other circumstances, such as not maintaining the home in good repair. However, the Board is concerned that requiring that advertisements include many examples of circumstances that may result in foreclosure could contribute to information overload. For that reason, the Board proposes to limit the required disclosure of clarifying information to the consumer living somewhere other than the dwelling longer than allowed by the loan agreement or not paying property taxes or insurance premiums. At the same time, the Board believes that clearly and conspicuously disclosing more than two events that cause a reverse mortgage to end may be possible. Therefore, reverse mortgage advertisements may state more than two such examples under the Board's proposal, as discussed below.

Proposed comment 33(e)(5)–1 provides examples that illustrate how an advertisement may disclose the clarifying information required by proposed § 226.33(e)(5). One such example is the following: "You cannot lose your home except in certain circumstances, including if you live somewhere else for longer than allowed by the loan agreement or you do not pay taxes or insurance." Proposed comment 33(e)(5)–2 clarifies that the disclosures required by proposed § 226.33(e)(5)(A) and (B) need be made only if applicable.

Proposed comment 33(e)(5)–3 states that proposed § 226.33(e)(5) does not require the use of a particular format in providing the required disclosures, other than requiring that they be equally prominent with and in close proximity to each triggering statement. Proposed comment 33(e)(5)–3 also clarifies that an advertisement need not make the required disclosures in a single sentence and may make the required disclosures, for example, using a list format. Further, proposed comment 33(e)(5)–3 states that an advertisement may provide the required disclosures in any order. Proposed comment 33(e)(5)–4 states that an advertisement for a reverse mortgage may state additional circumstances in which foreclosure may occur, but must not obscure the required disclosures.

33(e)(6) Amount Owed

Some advertisements state that a consumer or a consumer's heirs or estate cannot owe more than the consumer's home is worth with a reverse mortgage. Although a creditor's recourse in the event of a HECM default is limited to the value of a consumer's home, the loan balance can exceed the value of the home. A consumer or the consumer's heirs or estate must pay the entire loan balance to retain a home when a reverse mortgage becomes due.

In the past, some HECM creditors themselves mistakenly believed that a consumer or a consumer's heirs could retain the consumer's home by paying the home's value rather than the outstanding loan balance, leading HUD to issue a clarifying statement.[128] Given evidence of creditors' confusion in this regard, the Board believes that a statement in a reverse mortgage advertisement that a consumer or a consumer's heirs cannot owe more than the consumer's home is worth may mislead consumers. This type of assertion may give a consumer false comfort about the consumer's ability, or the ability of the consumer's heirs, to retain the home when a reverse mortgage's term ends. The Board therefore proposes to require that clarifying information accompany a statement that the consumer or a consumer's heirs or estate cannot owe more than the consumer's home is worth.

Proposed § 226.33(e)(6) provides that if an advertisement states that a consumer or a consumer's heirs or estate "cannot owe" or will "never repay" more than, or otherwise states that repayment is limited to, the value of the consumer's dwelling, each such statement must be accompanied by an equally prominent and closely proximate statement of the fact that (1) to retain the dwelling when the reverse mortgage becomes due the consumer or the consumer's heirs or estate must pay the entire loan balance and (2) the balance may be greater than the value of the consumer's dwelling. The proposed disclosures would reduce the risk that consumers will underestimate the likelihood that they or their heirs will lose a home they may want to keep.

Proposed comment 33(e)(6)–1 provides examples that illustrate how an advertisement for a reverse mortgage may disclose the clarifying information required by proposed § 226.33(e)(6). One such example is the following: "Your heirs cannot owe more than the value of your house, unless they want to keep the house when the reverse mortgage is due. To keep the house, they must pay the entire loan balance, which may be higher than the house's value."

33(e)(7) Payments for Taxes and Insurance

Many advertisements state that a reverse mortgage will enable a consumer to make no payments. A statement that there are no payments with a reverse mortgage may cause a consumer to overlook the need to pay property taxes or insurance. Many consumers are used to making a single payment to a creditor each month that includes payment for principal, interest, and property taxes and insurance. Such consumers may misconstrue a statement that a reverse mortgage will eliminate their payments to mean that the creditor will make taxes and insurance payments on their behalf out of home equity and that the consumer need not make those payments directly. To reduce the likelihood of consumer confusion, the Board proposes to require that a statement regarding the obligation to make property tax and insurance payments accompany a statement that a consumer is not required to make payments for a reverse mortgage.

Specifically, proposed § 226.33(e)(7) provides that, if an advertisement states that payments are not required for a reverse mortgage, each such statement must be accompanied by an equally prominent and closely proximate statement that a consumer must make payments for property taxes or insurance premiums, if applicable. Proposed § 226.33(e)(7) is consistent with § 226.24(f)(3), which provides that in an advertisement for a first-lien, closed-end mortgage, a statement of the amount of any payment triggers a requirement to disclose the fact that the stated payments do not include amounts payable for taxes and insurance premiums. Proposed comment 33(e)(7)–1 provides examples that illustrate how an advertisement for a reverse mortgage may disclose the clarifying information required by § 226.33(e)(7). One such example is the following: "There are no loan payments for a reverse mortgage. You continue to pay for property taxes and insurance."

33(e)(8) Government Fee Limitation

Some advertisements state that government limits on HECM fees minimize consumers' costs. This and similar statements may obscure the fact that HECM fees can be substantial, notwithstanding statutory or regulatory limits. A statement that the government restricts reverse mortgage fees may cause a consumer to think that HECMs are less expensive than "forward" mortgages or other financial products. In fact, reverse mortgages often have higher up-front costs than "forward" mortgages.[129]

Further, consumers may misconstrue a statement that the government caps HECM fees to mean that the government sets the amount of such fees. Fees charged may vary, however, because creditors need not charge the maximum fees permissible for a HECM. Also, pricing discretion exists despite HECM fee caps, because interest rates for HECMs are not prescribed. To address concern that consumers will misunderstand the effect government caps have on reverse mortgage costs, the Board proposes to provide that a statement regarding government limitations on fees or other costs triggers a requirement to provide specified clarifying information.

Proposed § 226.33(e)(8) provides that if an advertisement states that a Federal, state, or local government limits or regulates fees or other costs for a reverse mortgage, each such statement must be accompanied by an equally prominent and closely proximate statement that costs may vary among creditors and loan types and that less expensive

[128] *See* HUD Mortgagee Letter 2008–38 (Dec. 8, 2008).

[129] *See, e.g.,* U.S. Government Accountability Office, GAO–09–606 at 10–11 (describing typical reverse mortgage costs).

options may be available. Proposed comment 33(e)(8)–1 provides examples of how an advertisement may disclose the required clarifying information. One such example is the following: "The government has capped fees for HECMs. Costs may vary by lender or loan type, and cheaper alternatives may be available."

33(e)(9) Eligibility for Government Programs

Many reverse mortgage advertisements state that a reverse mortgage will not affect a consumer's Social Security or Medicare benefits. Although a reverse mortgage generally does not affect a consumer's benefits from or eligibility for Social Security or Medicare, reverse mortgage proceeds may affect a consumer's benefits from or eligibility for means-tested programs such as Supplemental Security Income (SSI) and Medicaid. Concerns have been raised that consumers may misunderstand a statement that a reverse mortgage does not affect certain government benefits to mean that a reverse mortgage does not affect government benefits generally.[130] Concerns also have been raised that some housing counselors do not mention that a reverse mortgage may affect benefits from and eligibility for government assistance, even though provision of this information is required.[131]

With careful planning, some consumers may avoid having a reverse mortgage adversely affect eligibility for or benefits from a means-tested government program. Consumers would benefit from clarification in an advertisement that, although a reverse mortgage may not affect eligibility for or benefits from a particular government program, a reverse mortgage may affect eligibility for and benefits from other government programs. Such clarification would identify an issue about which many consumers should seek additional information.

Proposed § 226.33(e)(9) provides that if an advertisement states that a reverse mortgage does not affect a consumer's eligibility for or benefits from a government program, each such statement must be accompanied by an equally prominent and closely proximate statement of the fact that a reverse mortgage may affect a consumer's eligibility for benefits through some government programs, such as SSI or Medicaid. Such advertisement must mention SSI and Medicaid specifically, so that consumers have concrete examples of means-tested programs to discuss with a housing counselor or other person. Proposed comment 33(e)(9)–1 provides examples that illustrate how an advertisement may disclose the clarifying information required by proposed § 226.33(e)(9).

33(e)(10) Credit Counseling Information

Some advertisements discuss the availability of housing counseling in connection with reverse mortgages. Requiring that an advertisement that refers to housing or credit counseling include a telephone number and Internet Web site for housing counseling resources maintained by HUD would help consumers to consult with a housing counselor early in the lending process. The Board proposes such requirement to promote the informed use of credit, consistent with TILA's goals.

Proposed § 226.33(e)(10) provides that if an advertisement contains a reference to housing or credit counseling, the advertisement must disclose a telephone number and Internet Web site for housing counseling resources maintained by HUD. Proposed comment 33(e)(10)–1 clarifies that disclosure of HUD's counseling telephone number and Web site must be at least as conspicuous as any reference to housing or credit counseling in the advertisement. The comment further clarifies that the telephone number and Web site information does not have to be included with every reference to counseling resources. Proposed comment 33(e)(10)–1 also clarifies that language identifying the purpose of the telephone number and Web site must accompany the disclosure, and provides the following illustrative statement: "For information about housing counseling options, call [telephone number] or go to [Internet Web site]."

Section 226.34 Prohibited Acts or Practices in Connection With Credit Subject to § 226.32

34(a) Prohibited Acts or Practices for Loans Subject to § 226.32

34(a)(4) Repayment Ability

The Board is proposing to remove and reserve a comment under § 226.34(a)(4). Section 226.34(a)(4) prohibits creditors from making a higher-priced mortgage loan without regard to the consumer's repayment ability as of consummation of the transaction. Comment 34(a)(4)–4 contains an erroneous cross reference to § 226.34(a)(4)(iv). Accordingly, the Board proposes to remove the comment. No substantive change is intended.

34(a)(4)(iv) Exclusions From Presumption of Compliance

The Board is proposing to add a new comment 34(a)(4)(iv)–3 to provide guidance on compliance with the repayment ability requirements of § 226.34(a)(4) for certain balloon loans with terms of less than seven years ("short-term balloon loans"). Section 226.34(a)(4)(iii) provides a presumption of compliance with the repayment ability requirements if the creditor follows certain procedures, including verifying the borrower's income. Under § 226.34(a)(4)(iv), however, the presumption of compliance is not available for certain loan products, such as short-term balloon loans. Exclusion of short-term balloon loans from the presumption of compliance has led creditors to ask the Board whether they can make such loans and how to comply with the repayment ability rule.

Proposed comment 34(a)(4)(iv)–3 states that the exclusion of short-term balloon loans from the presumption of compliance does not prohibit creditors from making short-term balloon loans that are higher-priced mortgage loans. The proposed comment would clarify, however, that the creditor must use prudent underwriting standards and determine that the value of the collateral (the home) is not the basis for repaying the obligation (including the balloon payment). The proposed comment clarifies that the creditor need not verify that the consumer has assets and/or income at the time of consummation that would be sufficient to pay the balloon payment when it comes due. Proposed comment 34(a)(4)(iv)–3 states that, in addition to verifying the consumer's ability to make regular monthly payments, the creditor should verify that the consumer would likely be able to satisfy the balloon payment obligation by refinancing the loan or through income or assets other than the collateral.

Proposed comment 34(a)(4)(iv)–3 contains the same guidance concerning short-term balloon loans as was previously provided in a Consumer Affairs Letter issued by Board staff in response to the inquiries from creditors noted above. *See* Short-Term Balloon Loans and Regulation Z Repayment Ability Requirement for Higher-Priced Mortgage Loans, CA 09–12 (Nov. 9, 2009). The Board is proposing to add new comment 34(a)(4)(iv)–3 to the staff commentary to make this existing guidance available to all creditors that are subject to Regulation Z's requirements. The Board seeks

[130] *See, e.g.,* Proposed Reverse Mortgage Guidance, 74 FR at 66658; Final Reverse Mortgage Guidance, 75 FR at ________.

[131] *See* U.S. Government Accountability Office, GAO–09–606 at 37.

comment, however, on whether the guidance can be improved as part of this rulemaking. For instance, would the addition of examples, illustrating when a consumer would and would not be considered able to satisfy the balloon payment by refinancing, provide greater assurance to creditors that consumers obtaining short-term balloon loans in similar circumstances would be deemed able to repay the obligation, as required by § 226.34(a)(4)? Should there be more concrete guidance regarding the use of assumptions for the terms on which the consumer might refinance in the future, and should the guidance vary depending on the current transaction's terms? For example, should guidance regarding the treatment of a two-year balloon loan with interest-only payments over the whole term differ from that regarding the treatment of a six-year balloon loan with amortizing payments?

Section 226.35 Prohibited Acts or Practices in Connection With Higher-Priced Mortgage Loans

35(a) Higher-Priced Mortgage Loans

The Board is proposing to amend § 226.35(a) to provide that a creditor determines whether a transaction is a higher-priced mortgage loan subject to § 226.35 by comparing the "transaction coverage rate," rather than the annual percentage rate, to the average prime offer rate. Under the proposal, the transaction coverage rate is a transaction-specific rate that would be used solely for coverage determinations; it would not be disclosed to consumers. A creditor would calculate the transaction coverage rate based on the rules in Regulation Z for calculation of the annual percentage rate, with one exception: The creditor would make the calculation using a modified value for the prepaid finance charge, as discussed below. The Board also is proposing to add new staff commentary clarifying when § 226.35 would apply to construction loans in which the creditor permanently finances the acquisition of a dwelling as well as the initial construction of the dwelling.

Background

In the 2008 HOEPA Final Rule, the Board adopted special consumer protections for "higher-priced mortgage loans." 73 FR 44522, 44603, July 30, 2008. These protections include: A requirement that creditors assess borrowers' ability to repay loans without regard to collateral and verify the borrower's income and assets; restrictions on a creditor's imposition of prepayment penalties; and a requirement to establish an escrow account for taxes and insurance for first-lien loans ("the 2008 HOEPA protections"). The Board defined a higher-priced mortgage loan as a transaction secured by a consumer's principal dwelling for which the annual percentage rate exceeds the "average prime offer rate" by 1.5 percentage points or more, for a first-lien transaction, or by 3.5 percentage points or more, for a subordinate-lien transaction.

The Board's objective in adopting these rules was to extend the 2008 HOEPA protections to the entire subprime market and generally to exclude the prime market from their coverage. The 2008 HOEPA protections were designed to address unfair and deceptive practices that were widespread in the subprime market. The prime market, however, did not show evidence that the same practices were as pervasive or were as clearly likely to injure consumers as in the subprime market. Thus, the Board did not apply the 2008 HOEPA protections to the prime market, stating that the protections should be applied broadly, "but not so broadly that the costs, including the always present risk of unintended consequences, would clearly outweigh the benefits." 73 FR 43522, 44532, July 30, 2008. The Board believed that, in the prime market, a case-by-case approach to determining whether practices are unfair or deceptive is more appropriate. The Board recognized, at the same time, that there is uncertainty as to what coverage metric would best achieve the objectives of covering the subprime market and generally excluding the prime market. The Board stated that it is appropriate to err on the side of covering somewhat more than the subprime market. 73 FR 43522, 43533, July 30, 2008.

In the August 2009 Closed-End Proposal, the Board proposed to amend § 226.4 to provide a simpler, more inclusive definition of the finance charge. *See* 74 FR 43232, 43321–23, Aug. 26, 2009. Under the proposal, most closing costs, including many third-party costs such as appraisal fees and premiums for lender's title insurance, would be included in the finance charge and APR. Thus, APRs would be greater than they are under the current rule. The Board noted that because APRs generally would increase, more loans would potentially qualify as higher-priced mortgage loans and HOEPA loans covered by §§ 226.32 and 226.34 and trigger state anti-predatory lending laws. 74 FR 43232, 43344–45, Aug. 26, 2009. The Board concluded, based on the limited data it had, that the proposal to improve the APR would be in consumers' interests. Comment was solicited on the potential impact of the proposed rule.

Problems with potential over-inclusive coverage of § 226.35. There are currently some differences between the APR and the average prime offer rate. Section 226.35(a)(2) defines "average prime offer rate" as an APR that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. These average terms currently are obtained from the Primary Mortgage Market Survey® (PMMS) published by Freddie Mac. Freddie Mac surveys mortgage creditors weekly on the loan pricing, consisting of interest rate and points, that they currently offer consumers with low-risk transaction terms and credit profiles. Thus, the average prime offer rate is calculated using data that includes only contract interest rates and points.

Because average prime offer rates are based on points but not other origination fees, they are generally comparable to the current APR under Regulation Z, but not perfectly so. The PMMS does not define "points," and it is likely that survey respondents generally consider "points" to include only discount points and, possibly, origination fees, which often are calculated as points (i.e., as a percentage of the loan amount). An APR includes not only discount points and origination fees but also other charges the creditor retains, such as underwriting and processing fees. Such charges are not commonly thought of as "points" because they are not calculated as percentages of the loan amount. Thus, survey respondents most likely do not include such charges in their points when they respond to the PMMS. The Board's August 2009 Closed-End Proposal would widen the disparity between the APR and the average prime offer rate. Under that proposal, APRs would be calculated based on a finance charge that includes most third-party fees in addition to points, origination fees, and any fees the creditor retains.

As noted above, the Board solicited comment on the impact of the August 2009 Closed-End Proposal on higher-priced mortgage loans and HOEPA loans and triggering of state predatory lending laws. Numerous mortgage creditors and their trade associations commented on the proposal to make the finance charge and APR more inclusive. Most expressed agreement in principle with the proposed finance charge definition. Nevertheless, most industry commenters opposed the proposal, stating that it would cause many prime loans to be incorrectly classified as higher-priced mortgage loans under § 226.35. They also stated that the proposal would inappropriately expand the coverage of HOEPA and State laws. These commenters noted that HOEPA and most State laws have not only APR tests but also "points and fees" tests and that the more inclusive finance charge would have a much more significant impact under the applicable points and fees tests than under the APR tests. One creditor estimated that 30–50% of its subprime loans, which currently are higher-priced mortgage loans but not HOEPA loans, would become HOEPA (or state "high-cost") loans under the proposal.

Consumer advocates uniformly supported the proposal to make the finance charge and APR more inclusive. They recognized the resulting expansion of coverage under §§ 226.32 and 226.35 and similar State laws, but they argued that any such expanded coverage would be appropriate. Consumer advocates stated that the more inclusive finance charge and APR would reveal newly covered loans for what they have always been, namely, HOEPA loans and higher-priced mortgage loans. Accordingly, they argued, the increased coverage would be warranted.

The Board's Proposal

A new metric for determining coverage. As discussed above, the Board's definition of a higher-priced mortgage loan was intended to cover all of the subprime mortgage market and generally to exclude the prime market. Based on public comment and the Board's own analysis, the Board believes the test for coverage under § 226.35 should be revised, especially in light of the Board's proposal to make the APR more inclusive. That is, the Board adopted the current test in 2008 knowing it would result in some degree of coverage beyond the subprime market, but the degree of coverage would expand significantly with the inclusion in the finance charge and APR of title insurance premiums and other third-party charges that currently are excluded. The Board therefore proposes to replace the APR with the "transaction coverage rate" as the transaction-specific metric a creditor compares to the average prime offer rate to determine whether the transaction is covered. The Board adopted the APR as the metric for coverage under § 226.35 because the Board believes the best way to identify the subprime market is by loan price, and the APR is the best available measure of loan price. *See* 73 FR 44532, July 30, 2008. The Board believes that a modified approach is appropriate, however, given the disparity between the average prime offer rate and the more-inclusive APR that the Board has proposed.

Under proposed § 226.35(a)(1), the creditor would compare the "transaction coverage rate," instead of the APR, to the average prime offer rate. As discussed below, the transaction coverage rate would be a modified version of the transaction's annual percentage rate. Specifically, under proposed § 226.35(a)(2)(i), the transaction coverage rate would be calculated in the same manner as the APR, except that it would be based on a modified prepaid finance charge that would include only finance charges retained by the creditor, its affiliate, or a mortgage broker, as discussed below. The transaction coverage rate would not reflect other closing costs that are treated as finance charges for purposes of the APR that is disclosed to the consumer. Thus, the proposed, more inclusive APR would reflect such third-party charges as title insurance premiums, appraisal fees, and credit report fees, whereas the transaction coverage rate would not. Proposed comment 35(a)(2)(i)–1 would clarify that the transaction coverage rate is not the APR that is disclosed to the consumer and that the transaction coverage rate calculated under § 226.35(a)(2)(i) would be solely for coverage determination purposes. Existing § 226.35(a)(2), which defines "average prime offer rate," would be redesignated as § 226.35(a)(2)(ii).

Mandatory use of transaction coverage rate. The Board's goal in developing the transaction coverage rate is to provide a simple modification to the metric for § 226.35 coverage that does not create undue regulatory burden for creditors. The Board recognizes that any new metric would impose some costs, including training staff and modifying software and other systems. The Board believes, however, that these costs should be relatively small because the proposal would necessitate only a one-time modification to creditors' systems. On balance, the Board believes the costs of the new metric would be offset by the benefits of ensuring that the 2008 HOEPA protections apply only to loans for which they were intended, i.e., subprime mortgages.

The Board considered whether to propose making the use of the transaction coverage rate optional. An optional approach, however, would have the anomalous result that identical transactions extended by two different creditors could have inconsistent coverage under § 226.35. The Board does not believe that whether a consumer receives the 2008 HOEPA protections should depend on which creditor extends the credit. The Board seeks comment, however, on whether the use of the transaction coverage rate should be optional.

Finance charges retained by the creditor, its affiliate, or a mortgage broker. The proposed transaction coverage rate would provide a measure of a loan's pricing that is more closely aligned with the average prime offer rate. As discussed above, the average prime offer rate reflects the contract interest rate and points for a hypothetical, low-risk transaction. Thus, the transaction coverage rate should reflect only a transaction's interest rate and points. A transaction's contract interest rate is well-understood, while "points" is not well-defined, as noted above. The proposal therefore seeks to define as clearly as possible which charges count toward the "points" component of the transaction coverage rate, i.e., which charges would be included in the modified prepaid finance charge used to calculate the transaction coverage rate. The Board proposes to include in the modified prepaid finance charge only charges that are retained by the creditor, its affiliates, or a mortgage broker. This rule would avoid any uncertainty about what is included and would prevent creditors from evading coverage by shifting points into other charges or to affiliated third-parties.

The proposal would include in the modified prepaid finance charge any charges retained by a mortgage broker to ensure that the transaction coverage rate is comparable to the average prime offer rate for both retail and wholesale mortgage transactions. The average prime offer rate reflects creditors' retail pricing, which is higher (either in rate or in points) than the pricing the same creditors set for wholesale transactions. Lower wholesale pricing reflects creditors' reduced overhead and other costs of origination for loans originated through a mortgage broker. This difference tends to be eliminated once the mortgage broker's compensation is added into the retail pricing that the consumer pays. To ensure that § 226.35 coverage determinations for wholesale transactions account for this difference, any charges retained by a mortgage broker would be reflected in the transaction coverage rate.

Proposed comment 35(a)(2)(i)–2 would clarify that the inclusion of charges retained by a mortgage broker would be limited to compensation that otherwise constitutes a prepaid finance charge. This limitation would exclude compensation paid by a creditor to a mortgage broker under a separate arrangement (e.g., compensation that comes from "yield spread premium"), although such compensation is included already to the extent it comes from amounts paid by the consumer that are prepaid finance charges, such as points. *See* comment 4(a)(3)–3.[132] If mortgage broker compensation comes from amounts paid by the consumer to the creditor that are finance charges but not prepaid finance charges, such as interest, those amounts would affect the transaction coverage rate just as they affect the APR, but the broker compensation itself would not affect the transaction coverage rate directly. Proposed comment 35(a)(2)(i)–2 would illustrate these principles with an example.

Alternative approach not proposed. Many industry commenters that expressed concerns about the Board's proposal to make the APR more inclusive suggested that the Board address the issue by revising the calculation of the average prime offer rate. These commenters asserted that the average prime offer rate should reflect average amounts for other closing costs that are reflected in the APR, in addition to the points currently included. The Board considered whether to propose such an approach but determined that it is not feasible. Closing costs vary significantly by geographical location. They also include costs that are fixed dollar amounts, which tend to have differing effects on the annual percentage rate depending on the loan amount. The commenters' suggested approach, therefore, would need to account for these two considerations, most likely by providing for separate average prime offer rates for various loan-size and geographical location categories. Such an approach would result in significant complexity and compliance burden for creditors.

In addition, the Board is not proposing to include closing costs in the average prime offer rate because the Board could not identify a reliable source for "average" closing costs in every location throughout the country. Because closing costs change over time, the necessary data source would have to be updated periodically. The Board is not aware of any source that includes all closing costs for all relevant geographical and loan-size variations and that is reliably and regularly updated. The Board considered regularly surveying creditors for information on closing costs, but determined that the cost and burden on creditors would be significant. The Board believes the proposal achieves the same objective as the alternative approach, but without imposing the burden of ongoing data collection and reporting on creditors.

HOEPA and State laws. As noted above, the Board considered the impact of the 2009 Closed-End Proposal's more inclusive APR on the coverage of HOEPA and certain State laws, in addition to higher-priced mortgage loans under § 226.35. Industry commenters also raised concerns regarding additional coverage. The Board's proposal to address the potential impact of the more inclusive finance charge on HOEPA coverage under the points and fees test is discussed above in the section-by-section analysis of § 226.32(b)(1). State predatory lending coverage thresholds are established under state authorities. The Board believes that those authorities are best positioned to make any adjustments to coverage they deem appropriate.

35(a)(3)

Construction-permanent loans. The Board is proposing to add new comment 35(a)(3)–1 to clarify how § 226.35 applies to cases where a creditor that extends financing for the initial construction of a dwelling also may permanently finance the home purchase. The proposed comment states that the construction phase is not a higher-priced mortgage loan, as provided in § 226.35(a)(3), regardless of the creditor's election to disclose such cases as either a single transaction or as two separate transactions, pursuant to § 226.17(c)(6)(ii).

Loans for the initial construction of a dwelling are excluded from the definition of a higher-priced mortgage loan by § 226.35(a)(3). In adopting the 2008 HOEPA Final Rule, the Board found that construction-only loans do not appear to present the same risk of consumer abuse as other loans. Applying § 226.35 to construction-only loans, which generally have higher interest rates than the permanent financing, could hinder some borrowers' access to construction financing. The permanent financing of such loans, however, is not excluded from the definition. The Board has received inquiries as to how the § 226.35 coverage test and the 2008 HOEPA protections apply to a construction loan that may be permanently financed by the same creditor.

Section 226.17(c)(6)(ii) permits creditors, at their option, to disclose construction-permanent financing as either a single transaction or two separate transactions. That is, if a creditor extends credit to finance the initial construction of a dwelling and may permanently finance the transaction at the end of the construction phase, the creditor may deliver a single TILA disclosure of both phases as a single transaction or may deliver a separate TILA disclosure for each phase as though they were two separate transactions. Creditors have asked whether and how a creditor's election to disclose such cases as either a single transaction or as two separate transactions under § 226.17(c)(6)(ii) affects the coverage and application of § 226.35. In providing that construction lending would not be subject to § 226.35, the Board did not intend to influence creditors' elections under § 226.17(c)(6)(ii). Neither did the Board intend these elections to affect the exclusion of construction financing from the meaning of higher-priced mortgage loan. In any event, the proposed transaction coverage rate, discussed above, would eliminate the use of APRs to determine whether transactions are subject to § 226.35. Such determinations therefore would be unaffected by how many disclosures the creditor elects to provide for a construction-permanent loan, as transaction coverage rates would not be disclosed.

Proposed staff comment 35(a)(3)–1 would clarify that, even if the creditor discloses construction financing that the creditor may permanently finance as two separate transactions, a single transaction coverage rate, reflecting the appropriate charges from both phases, must be calculated and compared to the average prime offer rate to determine coverage under § 226.35(a)(1). If the transaction is determined to be a higher-priced mortgage loan, the proposed comment would clarify that only the permanent phase is subject to the requirements of § 226.35. For example, the requirement to establish an escrow account prior to consummation of a higher-priced mortgage loan secured by a first lien on a principal dwelling, under § 226.35(b)(3), would apply only

[132] Comment 4(a)(3)–3 provides that indirect compensation such as yield spread premiums paid by creditors to mortgage brokers is not a prepaid finance charge. Creditors and brokers have asked the Board whether these payments should be treated as prepaid finance charges because HUD's revised RESPA rules require a yield spread premium to be disclosed as a credit to the borrower. They believe that this disclosure results in a direct payment from the consumer to the mortgage broker, made by drawing on the disclosed credit. The Board notes that the RESPA disclosure does not affect the correct treatment of such payments for TILA purposes. Accordingly, indirect compensation such as yield spread premiums are not included as a separate component of the finance charge, regardless of how they must be disclosed on the RESPA disclosures.

to the permanent phase and not to the construction phase. The proposed comment would ensure that a creditor's disclosure election under § 226.17(c)(6)(ii) is not affected by whether the transaction would be covered under § 226.35. It also would ensure that the construction loan phase is not subject to § 226.35's requirements, for the reasons stated.

Effective Date for 2008 HOEPA Final Rule

When the Board adopted the 2008 HOEPA Final Rule, it adopted comment 1(d)(5)–1, which provides guidance on the effective date for the rule. The Board is proposing to make two changes to comment 1(d)(5)–1, as discussed in more detail in the section-by-section analysis for § 226.1 above. One change would provide that a radio advertisement occurs on the date it is broadcast, and the other would conform comment 1(d)(5)–1 to changes proposed to § 226.20(a). Proposed § 226.20(a) provides that a new transaction would occur when the same creditor and the consumer agree to change certain key terms of an existing closed-end loan secured by real property or a dwelling, without reference to State law. A modification that is a new transaction under proposed § 226.20(a)(1) would also be subject to the 2008 HOEPA rules in § 226.35, if the new transaction is a "higher-priced mortgage loan" under § 226.35(a). The Board is soliciting comment on the potential burdens and benefits of the proposed changes to § 226.20(a) and comment 1(d)(5)–1.

35(b) Rules for Higher-Priced Mortgage Loans

Comment 35(b)–1 provides guidance regarding the applicability of the higher-priced mortgage loan rules to closed-end mortgage transactions. The Board proposes to amend comment 35(b)–1 to add a cross-reference to proposed comment 20(a)(1)(i)–2, which clarifies that, if the same consumer and same creditor agree to increase the interest rate on a transaction resulting in the new transaction being a higher-priced mortgage loan under § 226.35(a), then the creditor must provide new disclosures and also must comply with the requirements under § 226.35(b).

Section 226.38 Content of Disclosures for Closed-End Mortgages

38(a) Loan Summary

38(a)(5) Prepayment Penalty

The August 2009 Closed-End Proposal would create a new § 226.38 governing disclosure content for mortgage transactions. (Current § 226.18 would provide disclosure content for non-mortgage transactions.) For the same reasons discussed above under § 226.18(k)(1), this proposal would revise proposed comment 38(a)(5)–2 to parallel proposed comment 18(k)(1)–1.

38(h) Required or Voluntary Credit Insurance, Debt Cancellation Coverage, or Debt Suspension Coverage

In the August 2009 Closed-End Proposal, the disclosures for credit insurance, debt cancellation coverage, or debt suspension coverage required under § 226.4(d)(1) and (d)(3) were also listed in proposed § 226.38(h). The Board proposes to consolidate the list of these disclosures in § 226.4(d)(1) and (d)(3), and provide a cross-reference to the required disclosures in § 226.38(h). Associated commentary would be revised accordingly.

The August 2009 Closed-End Proposal would require creditors to make a determination at the time of enrollment that the consumer meets any applicable age or employment eligibility criteria for insurance or debt cancellation or debt suspension coverage. *See* proposed §§ 226.4(d)(1)(iv) and (d)(3)(v), 226.38(h). To provide creditors with some flexibility, the Board proposes to revise comment 38(h)–2 to allow creditors to make the determination *prior to* or at the time of enrollment.

38(k) Reverse-mortgage Transactions

Currently reverse-mortgage transactions that are structured as closed-end credit are subject to §§ 226.17 and 18. Under the Board's August 2009 Closed-End Proposal, disclosures for closed-end mortgages would move to new §§ 226.37 and 226.38. For closed-end reverse mortgages, the Board is proposing to consolidate the content of the disclosure requirements in § 226.33. However, under the August 2009 Closed-End Proposal there would be a number of other references in Regulation Z to mortgages subject to § 226.38, which include closed-end reverse mortgages. In order to make clear that closed-end reverse-mortgage transactions should still be included in any reference to § 226.38, the Board proposes to mention them explicitly in § 226.38(k) and provide a cross-reference to the provisions in § 226.33 and § 226.38 which apply to reverse mortgages.

Section 226.40 Prohibited Acts or Practices in Connection With Reverse Mortgages

In addition to the disclosure and advertising rules discussed above under § 226.33, the Board is proposing additional consumer protections for reverse mortgages. As discussed below, the proposal would prohibit requiring the consumer to purchase other financial or insurance products as a condition of obtaining the reverse mortgage and would require counseling for reverse mortgage consumers. The Board also considered other consumer protections, discussed below, that it is not proposing.

40(a) Requiring the Purchase of Other Financial or Insurance Products

Background

Consumer advocates and policy makers have raised concerns that reverse mortgage creditors and others may persuade consumers to use the proceeds of their reverse mortgages to purchase financial or other products unsuited to their circumstances. Based on discussions with industry representatives and consumer advocates, the Board understands that reverse mortgage originators often refer reverse mortgage consumers to third parties that offer the consumers other products or services. Some of these creditors or others affirmatively require the consumer to purchase another financial product to obtain the reverse mortgage. Some consumer advocates have stated that more unscrupulous creditors have allegedly "tied" other products to the reverse mortgage by covertly slipping authorization documents for them in with the reverse mortgage paperwork.[133]

Providers of other financial and insurance products may receive commissions, and those who refer consumers to these providers may receive referral fees, creating strong incentives to encourage reverse mortgage consumers to purchase additional products regardless of whether they are appropriate.[134] When financed by reverse mortgage proceeds, these commissions and fees can deplete home equity, often without the consumer's full awareness of these charges and their long-term consequences.

Products often cited as being required as part of a reverse mortgage transaction

[133] *See, e.g., Building Sustainable Homeownership: Responsible Lending and Informed Consumer Choice,* Public Hearing on the Home Equity Lending Market before the Federal Reserve Bank of San Francisco, 183 (2006) (Statement by Shirley Krohn, Board Chair, Fair Lending Consortium).

[134] *See, e.g., id.* (statement by Margaret Burns, Director of the Federal Housing Administration's Single Family Program Development, U.S. Department of Housing and Urban Development); Nat'l Consumer Law Center, *Subprime Revisited: How Reverse Mortgage Lenders Put Older Homeowners' Equity at Risk,* 14 (Oct. 2009) (NCLC Report).

include annuities,[135] certificates of deposit (CDs) and long-term care insurance, among others. These may be beneficial products for many consumers and an appropriate way to spend reverse mortgage funds; however, purchase of these and other products may harm consumers who are uninformed or misinformed about them.

Consumers who purchase an annuity, for example, normally cannot receive payments until a future date; some reverse mortgage consumers have reportedly been sold annuities scheduled to mature after their life expectancy.[136] Further, an annuity may yield at a lower rate of interest than the reverse mortgage used to pay for it, causing a borrower to lose more in home equity than he or she could gain in annuity profits. Reverse mortgage borrowers who become aware of these drawbacks face high fees for early withdrawal or cancellation of the annuity.

Similarly, a CD may have a lower rate of interest than the reverse mortgage, tying up the consumer's money without yielding a greater return than the corresponding loss of home equity. Should the consumer need the funds before expiration of the CD term, high early withdrawal penalties may apply.

Long-term care insurance may be unnecessary, such as where the long-term care insurance coverage is not appreciably better than Medicaid coverage. Other consumers may not be able to afford the premiums if they go up, resulting in the loss of all of their reverse mortgage and other funds used to pay upfront costs and premiums. Further, a particular plan may not cover what the consumer needs, or policies may have terms or limitations that make receiving money for a claim difficult.

Housing and Economic Recovery Act of 2008 (HERA)

To address concerns about inappropriate product tying in reverse mortgage transactions, in 2008 Congress adopted three rules restricting the sale of other products and services with an FHA-insured reverse mortgage, or HECM. Adopted as part of the Housing and Economic Recovery Act of 2008 (HERA),[137] these rules apply only to HECMs; they do not affect proprietary reverse mortgage products.

- *Anti-tying Provision: First,* Congress prohibited the lender (or any other party) from requiring a borrower (or any other party) to purchase "an insurance, annuity, or other similar product" as a condition of obtaining a HECM.[138] Products exempt from this prohibition include title insurance, hazard, flood, or other peril insurance, or other products determined by HUD to be "customary and normal" for originating a HECM.
- *Provision Restricting Activities: Second,* Congress prohibited the lender and "any other party that participates in the origination of a [reverse] mortgage" from "participat[ing] in" any financial or insurance activity other than reverse mortgage lending. These parties may do so, however, if they have "firewalls and other safeguards" to ensure the following:
- Individuals involved in originating a reverse mortgage are not involved with any other financial or insurance product and have no incentive to see that the reverse mortgage consumer obtains one.
- The consumer will not be directly or indirectly required to purchase another financial or insurance product.
- *Provision Restricting Relationships:* Third, Congress prohibited reverse mortgage lenders and "any other party that participates in the origination of a [reverse] mortgage" from being "associated with" or "employing" any party that participates in or is involved with any financial or insurance activity other than reverse mortgage lending. These relationships are permitted, however, if the party maintains the firewalls and safeguards described above.

HUD—Implementing the HERA Cross-selling Provisions

As an initial step in implementing the HERA cross-selling provisions, HUD has issued a Mortgagee Letter instructing HECM lenders that they must not condition a HECM on the purchase of "any other financial or insurance product." [139] Consistent with HERA, the Mortgagee Letter also advises lenders to establish firewalls and other safeguards to ensure that there is no undue pressure or appearance of pressure for a HECM borrower to purchase another product from the mortgage originator or mortgage originator's company. The Board understands that HUD plans to issue an Advance Notice of Proposed Rulemaking (ANPR) to solicit input on how HUD should interpret the HERA cross-selling provisions.

Federal Anti-Tying Laws

Banks and other depository institutions are subject to anti-tying rules under the Bank Holding Company Act [140] (BHCA) and the Gramm-Leach Bliley Act [141] (GLBA).

Bank Holding Company Act amendments. Section 106 of the BHCA generally prohibits a bank from conditioning the availability or price of one product, such as a reverse mortgage, on a requirement that the customer also obtain another product, such as insurance or an annuity, from the bank or an affiliate of the bank. However, the statute expressly permits a bank to condition the availability or price of a product or service on a requirement that the customer also obtain certain bank products—loan discount, deposit, or trust services—from the bank or an affiliate of the bank. Savings associations and savings and loan association holding companies and their affiliates are subject to similar anti-tying restrictions under the Home Owners' Loan Act (HOLA).[142]

Gramm-Leach Bliley Act. Section 305 of the GLBA requires the Federal banking agencies to prescribe regulations that prohibit depository institutions from engaging in practices that would cause a reasonable consumer to believe that an extension of credit (which would include a reverse mortgage) is conditioned on the purchase of an insurance product or an annuity from the creditor or its affiliates, or on the consumer's agreement not to purchase an insurance product or annuity from an unaffiliated entity.

Interagency Supervisory Guidance on Reverse Mortgages. The Board and other Federal banking agencies, through the FFIEC, responded to concerns about unfair and deceptive practices in reverse mortgage lending by issuing guidance

[135] In this Supplementary Information, an "annuity" means a contractual arrangement under which an insurance or financial entity receives a premium or premiums from a consumer, and in exchange is obligated to make payments to the consumer at some point in the future, usually at regular intervals. *See* 4 Am. Jur. 2d Annuities, § 1.

[136] *See, e.g., Reverse Mortgages: Polishing not Tarnishing the Golden Years,* Hearings before the Senate Special Committee on Aging, 110th Cong., 1st Sess. 22 (2007) (statement by Prescott Cole, on behalf of the Coalition to End Elder Financial Abuse).

[137] Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289 (July 30, 2008), § 2122 (amending Section 255 of the National Housing Act, 12 U.S.C. 1715z–20).

[138] HERA, § 2122(a)(9) (codified at 12 U.S.C. 1715z–20(n) and (o)).

[139] HUD Mortgagee Letter 2008–24 (Sept. 16, 2008).

[140] Public Law 91–607, Title I, § 106(b), 84 Stat. 1766 (Dec. 31, 1970) (codified at 12 U.S.C. §§ 1972 (banks and bank holding companies), 1464(q) (savings and loan associations), and 1467a(n) (savings and loan association holding companies and their affiliates)).

[141] Public Law 106–102, Title III, Subtitle A, § 305, 113 Stat. 1338, 1410–15 (Nov. 12, 1999) (codified at 12 U.S.C. 1831x) (implemented at 12 CFR 14.30 (Office of the Comptroller of the Currency), 208.83 (Board of Governors of the Federal Reserve System), 343.30 (Federal Deposit Insurance Corp.), and 536.30 (Office of Thrift Supervision)).

[142] *See* 12 U.S.C. 1464(1) and 1467a(n).

for institutions offering reverse mortgages.[143] To guard against inappropriate product tying with reverse mortgages, the Final Reverse Mortgage Guidance advises institutions to adopt policies and internal controls that do the following:

- Ensure that the institution does not violate any applicable anti-tying restrictions. To illustrate, the Guidance states that an institution risks violations if it requires the borrower to purchase an annuity, insurance or any product other than a traditional banking product in order to obtain a reverse mortgage from the institution or an affiliate.
- Ensure that the institution complies with restrictions designed to avoid conflicts of interest. To illustrate, the Guidance states that an institution risks violations if it requires the borrower to purchase an annuity, insurance (other than appropriate title, flood or hazard insurance), or similar financial product from the institution or any third party in order to obtain a reverse mortgage from the institution or broker.[144]

The Guidance also advises institutions to adopt compensation policies to guard generally against "other inappropriate incentives" for loan officers and third parties, such as mortgage brokers and correspondents, to make a loan.[145]

The Board's Proposal

The anti-tying provisions of the BHCA, GLBA and HERA apply to some reverse mortgages, but not all. The Board believes that anti-tying rules specific to reverse mortgages may be appropriate to ensure that all reverse mortgage originations are covered—including both government-insured reverse mortgages and proprietary products, as well as reverse mortgages originated by both depository and nondepository institutions. For the reasons discussed below, the Board believes that the practice of requiring a consumer to purchase any other "financial or insurance product" as a condition of obtaining a reverse mortgage could be unfair to consumers. Based on its authority under TILA Section 129(*l*)(2)(A) to prohibit acts or practices in mortgage lending that the Board finds to be unfair or deceptive, the Board proposes new § 226.40(a) to prohibit creditors and loan originators from engaging in this practice. The Board does not intend to suggest that this practice is unfair prior to the effective date of any final rule implementing this proposed prohibition. Prior to the effective date of a final rule, the Board expects that whether this practice is unfair will be judged on a case-by-case basis and on the totality of the circumstances under applicable laws and regulations.

Substantial consumer injury. Consumers who are required to use reverse mortgage proceeds to purchase ancillary financial or insurance products stand to lose substantial equity in their most valuable lifetime asset for little or no benefit. This can take away their ability to cover daily living expenses, medical costs and other needed expenses at a time when their income sources are most limited. In addition, for many seniors, their longtime goal of having assets to share with their heirs can be significantly undermined, affecting their heirs' financial circumstances as well. Worse, misuse of reverse mortgage funds may leave borrowers unable to afford taxes and insurance or home maintenance required under the reverse mortgage contract, exposing them to foreclosure at an especially vulnerable time in their lives.

Injury not reasonably avoidable. For several reasons, reverse mortgage consumers may not be reasonably able to avoid the injuries that may result from having to use their reverse mortgage funds for an ancillary product, or from having to obtain a substantially more expensive reverse mortgage if they do not purchase an additional product. First, reverse mortgage borrowers often have limited options for obtaining additional funds; for some, a reverse mortgage may be the resource of last resort. Faced with high medical expenses or other financial challenges, these consumers may be forced to accept a requirement that they use reverse mortgage funds to purchase another product, even if they question its necessity or benefits, or to accept a substantially more expensive loan that will diminish their home equity much more quickly.

Second, reverse mortgages are complex loan products whose requirements and characteristics tend to be unfamiliar even to the most sophisticated consumers. Thus, many consumers may be easily misled or confused about the costs of other products and services and the potential downsides to using their home equity to pay for them.

Third, other consumer protections may not, by themselves, sufficiently protect reverse mortgage consumers from inappropriate product tying because reverse mortgages are especially complex and the target consumer population—seniors—is comparatively vulnerable. For example, the disclosure required in proposed § 226.33(b) that the consumer is not obligated to use his or her reverse mortgage proceeds to purchase any other financial or insurance product or service is an important consumer protection but may not by itself protect all consumers from persuasive loan officers and brokers, who may pressure consumers to rush through paperwork. In addition, the proposed anti-tying rule and the disclosure rule are complementary: the anti-tying rule is necessary to make the disclosure true.

Similarly, reverse mortgage counseling, required under proposed § 226.40(b), is critical to a consumer's understanding of a reverse mortgage but may not sufficiently protect consumers from inappropriate product tying. Counselors are not trained to advise consumers about the suitability of a range of financial or insurance products and services, and recent data indicate that the effectiveness of counseling may not be consistent from borrower to borrower.[146]

Injury not outweighed by countervailing benefits. On balance, potential benefits of tying other products to a reverse mortgage do not appear to outweigh the substantial harm that could be caused, as described above. The Board recognizes that requiring a consumer to pay for certain additional financial products to obtain a reverse mortgage or certain terms may benefit some consumers. For instance, if a consumer opts to receive reverse mortgage proceeds in a lump sum to take advantage of a fixed rate, the consumer may benefit from putting the funds in a CD rather than a savings account. However, consumers could still enjoy this benefit by voluntarily choosing this option. The proposed anti-tying prohibition prohibits the consumer from being *required* to put the money in a CD, because the consumer would incur penalties for early withdrawal.

Benefits to competition also do not appear to outweigh injury to the consumer. Indeed, it has long been recognized that tying arrangements suppress competition.[147] The function of a tying arrangement is generally to market a product that is critical or desirable to a consumer (the reverse mortgage) and tie access to that product to the purchase of a less critical or

[143] Final Reverse Mortgage Guidance, 75 FR 50801.

[144] *Id.* at 50811

[145] *Id.*

[146] U.S. Government Accountability Office, GAO–09–606 at 32–40.

[147] *See Standard Oil Co. of Cal.* v. *United States,* 337 U.S. 293, 305–06 (1949) (noting that tying arrangements "serve hardly any purpose other than to suppress competition").

desirable product (the ancillary financial or insurance product).[148] Product tying by definition creates an obstacle to a consumer's ability to survey the available alternatives and choose the most advantageous product. In an ideal marketplace, if a consumer wants certain financial products, the consumer could weigh the costs, benefits, and risks of several alternatives, such as various insurance products. In a tying arrangement, however, the creditor chooses a product for the consumer regardless of the benefits for that consumer. By contrast, if consumers are permitted to choose ancillary products freely, as the proposed rule seeks to promote, competition would likely increase and costs would concomitantly go down.

The Board requests comment on whether the proposed anti-tying rule addresses the practices of greatest concern and prevalence regarding product tying in reverse mortgage transactions. In this regard, the Board invites additional examples of inappropriate product tying in reverse mortgage transactions, as well as commenters' views on the potential effectiveness of the proposal in stopping these practices. Specific aspects of the proposed prohibition are discussed below.

Covered Persons. The proposed anti-tying rule would apply to a creditor or a loan originator, as defined in § 226.36(a)(1). Regulation Z defines "creditor" to mean, in pertinent part, "A person (A) who regularly extends consumer credit that is subject to a finance charge * * *, and (B) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract." § 226.2(a)(17)(i). Under the Board's August 2009 Closed-End Proposal, a "loan originator" would be defined as, "with respect to a particular transaction, a person who for compensation or other monetary gain, arranges, negotiates, or otherwise obtains an extension of consumer credit for another person. The term 'loan originator' includes employees of the creditor. The term includes the creditor if the creditor does not provide the funds for the transaction at consummation out of the creditor's own resources, out of deposits held by the creditor, or by drawing on a bona fide warehouse line of credit." Proposed § 226.36(a)(1); 74 FR 43232, 43331–43332, Aug. 29, 2009. This definition was adopted by the Board in a final rule published elsewhere in today's **Federal Register.** The Board requests comment on the proposal to apply this rule to creditors and loan originators, including whether the proposed anti-tying rule should apply to any other persons.

40(a)(1) Financial or Insurance Products

Excluded Products and Services

Proposed § 226.40(a)(1) excludes from the meaning of "financial or insurance product" two types of products and services: (1) transaction accounts and savings deposit accounts, as defined in Regulation D, 12 CFR part 204, that are established to disburse the reverse mortgage proceeds; and (2) products and services customarily required to protect the creditor's interest in the collateral or otherwise mitigate the creditor's risk of loss.

Transaction accounts and savings deposits. With the first exemption—transaction accounts and savings deposits, as defined in Regulation D, that are established to disburse reverse mortgage proceeds—the Board seeks to facilitate the disbursement of reverse mortgage proceeds to the consumer. The Board understands based on outreach that a consumer may be able to access their reverse mortgage funds more readily if they are deposited in an account with the creditor or loan originator. Under Regulation D, a "transaction account" includes demand deposit accounts such as traditional checking accounts and NOW accounts.[149] A "savings deposit" includes traditional interest-bearing savings accounts, passbook savings accounts and money market accounts.[150] The Board does not propose to limit the consumer's use of these accounts only to transactions involving proceeds of the reverse mortgage. However, the Board proposes to permit that these accounts be required only if they will serve as a means of disbursing reverse mortgage proceeds. Neither "transaction accounts" nor "savings deposits" under Regulation Z include "time deposit" accounts. As indicated in proposed comment 40(a)(1)–1, the Board intends to prohibit the tying of time deposit accounts, which include CDs and other accounts to which penalties for early withdrawal may apply, to a reverse mortgage.

The Board requests comment on the necessity of the exemption for transaction and savings deposit accounts from the products that cannot be tied to a reverse mortgage, and solicits views on whether this exemption should include a broader or narrower range of accounts.

Products and services customarily required in connection with a reverse mortgage. The Board also proposes to exempt products and services that creditors or loan originators "customarily" require in a reverse mortgage transaction to safeguard their interest in the collateral or otherwise guard against loss. Proposed comment 40(a)(1)–2 explains that these products would include, among others, "appraisal or other property evaluation services; title insurance; flood, hazard or other peril insurance; and mortgage insurance, such as the insurance required by the U.S. Department of Housing and Urban Development." The Board believes that this exemption is necessary to facilitate the availability of credit to consumers and to promote the safety and soundness of lending institutions. Comment is requested on the appropriateness of this exemption, and the utility of the examples of exempt products and services in the proposed comment.

Covered Products and Services

Proposed comment 40(a)(1)–1 clarifies that the "financial or insurance products," namely, products and services that may not be tied to a reverse mortgage, include both bank and nonbank products. The comment provides the following examples of covered products and services: extensions of credit, trust services, certificates of deposit, annuities, securities and other nondepository investment products, financial planning services, life insurance, long-term care insurance, credit insurance, and debt cancellation and debt suspension coverage.

Unlike the proposal for reverse mortgages, the BHCA anti-tying provision specifically permits a bank to condition both the availability and price of credit on the requirement that the customer obtain a product traditionally provided by a bank, specifically, a "loan, discount, deposit, or trust service." [151] These "bank" products include, but are not limited to, all types of extensions of credit, including loans, lines of credit, and backup lines of credit, and all forms of deposit accounts, including demand, negotiable order of withdrawal ("NOW"), savings and time deposit accounts, as well as CDs.

With the exception of certain deposit accounts, discussed below, the Board proposes to include these types of bank products in the proposed anti-tying rule for reverse mortgages for three reasons.

[148] *See Times-Picayune Publishing Co.* v. *United States,* 345 U.S. 594, 614 (1953) ("The common core of * * * unlawful tying arrangements is the forced purchase of a second distinct commodity with the desired purchase of a dominant 'tying' product.").

[149] *See* 12 CFR 204.2(e).

[150] *See id.* 204.2(d).

[151] 12 U.S.C. 1972(1)(A).

First, any number of traditional bank products could be inappropriate for a reverse mortgage consumer to purchase in connection with obtaining the reverse mortgage. As noted, one example would be a CD that yields at a lower rate than the rate of interest accruing on the reverse mortgage. Thus, the proposal is intended to enhance consumer protection by covering a fuller range of potential abuses.

Second, as discussed earlier, the Board believes that reverse mortgage borrowers are particularly vulnerable to abusive product tying and need stronger protections than those that apply to other financial service consumers. The proposal is intended to give reverse mortgage borrowers added protections without diminishing their access to appropriate traditional bank products, such as a checking or savings account to facilitate receipt of funds; reverse mortgage consumers would retain the freedom to choose any product voluntarily.

Third, an exemption for bank products would unfairly favor depositories over nondepositories. Unlike the BHCA's anti-tying rule, which applies only to depository institutions, the Board's proposed rule would apply to both depositories and nondepositories. The rationale for the traditional bank product exception under the BHCA anti-tying rule—namely, to allow banks and their customers to continue to negotiate their fee arrangements on the basis of the customer's entire banking relationship with the bank—would not apply to nondepositories. In effect, depositories would have greater leverage to reduce rates and fees on reverse mortgages than nondepositories because they could package a wider range of products with the reverse mortgage.

Proposed comment 40(a)(1)–1 also specifically mentions certain products that the Board has learned through research and outreach may be especially problematic in reverse mortgage transactions. These include annuities, financial planning services, and long-term care insurance. Credit insurance and debt cancellation and debt suspension coverage are mentioned to clarify that they would be covered as well, even though they may not be common in reverse mortgage transactions.

Other Products and Services

As proposed, the reverse mortgage anti-tying rule would not prohibit conditioning a reverse mortgage on the consumer's obtaining home improvement services, because home repairs may legitimately be required before a consumer is eligible for a reverse mortgage.[152] The Board received anecdotal evidence, however, that reverse mortgage originators may require consumers to obtain unnecessary or excessively costly home repairs. The Board requests additional evidence of abuse in home improvement contracting associated with reverse mortgages, if any, and comments on whether and how Board rules should address potential abuse in this area without interfering with legitimately required repairs.

The Board requests comment on benefits or drawbacks of its proposed explanations of "financial or insurance product," as well as whether any additional products should be expressly included in or exempted from the tying restrictions.

40(a)(2) Safe Harbor

The Board is aware that whether a creditor has required a consumer to purchase another product to obtain a reverse mortgage in violation of § 226.40(a) may not always be clear. For this reason, the Board proposes in § 226.40(a)(2) a "safe harbor" for compliance with the anti-tying rule. The proposed paragraph provides that a creditor or other person will not be deemed to have required a consumer to purchase another financial or insurance product if two conditions are met.

First, the consumer received at application the "Key Questions to Ask about Your Reverse Mortgage" document required under proposed § 226.33(b), or a substantially similar document. As proposed by the Board, this document includes a statement that the consumer is not obligated to purchase any other financial or insurance product to obtain the reverse mortgage, along with explanatory information.

Second, for a reverse mortgage subject to § 226.5b, the account was opened, or, for any other reverse mortgage, the loan was consummated, at least 10 calendar days before the consumer becomes obligated to purchase any financial or insurance product from any of the following persons:

(1) The creditor;

(2) The loan originator;

(3) An affiliate of either the creditor or loan originator; or

(4) Any other party, if the creditor, loan originator, or an affiliate of either will receive compensation for the purchase of the ancillary product or service.

Comment 40(a)(2)–1 safe harbor conditions not met. Proposed comment 40(a)(2)–1 clarifies that where the safe harbor conditions are not met in a particular reverse mortgage transaction, the creditor or loan originator will not necessarily have violated the anti-tying rule in § 226.40(a). Whether a violation has occurred in this case will depend on an evaluation of all of the facts and circumstances. To provide additional guidance, however, the Board proposes an example of an instance in which the safe harbor conditions were not met and the creditor violated § 226.40(a). In this example, the terms or features of a reverse mortgage are not available unless the consumer purchases another financial or insurance product; in this situation, the Board believes that the consumer has been required to purchase the product to obtain the reverse mortgage.

The Board solicits comment on the example of an anti-tying violation where the creditor did not meet the safe harbor conditions.

"Key Questions" Document

The first condition of the safe harbor—that the consumer has received the "Key Questions to Ask about Your Reverse Mortgage"—is intended to promote the consumer's understanding that he or she is not obligated to purchase an additional financial or insurance product. As proposed by the Board, this two-page document includes the following information for the consumer:

What if my lender wants me to use money from my reverse mortgage to buy an annuity or make another investment?

Under Federal law, you cannot be required to use your reverse mortgage money to purchase any other financial or insurance product (such as an annuity, long-term care insurance, or life insurance). If another product is offered to you, make sure you understand: (1) how the product works and what its benefits are, (2) how much it costs, (3) whether you need it, and (4) how much money the person selling the product makes if you purchase it. Talk with a HUD-approved reverse mortgage counselor or financial advisor before you decide.

See Attachment A. To qualify for the safe harbor, the creditor or loan originator must have provided this disclosure on or with the application, as required under proposed § 226.33(b).

10-Calendar-Day Waiting Period

The Board believes that the "Key Questions" document is an important

[152] *See, e.g.,* 24 CFR 206.47 (requiring properties that do not meet the property standards of the HECM program to be repaired before FHA will insure reverse mortgages secured by those properties).

consumer safeguard but is concerned that by itself the document may not sufficiently protect all consumers from high-pressure sales tactics. Therefore, the Board proposes a second element of the safe harbor—requiring a 10-day waiting period after account-opening or consummation, as applicable, before the consumer becomes obligated to purchase another financial or insurance product from one of four parties: the creditor; the loan originator; an affiliate of either the creditor or loan originator; and any other person, if the creditor, loan originator, or an affiliate of either will receive compensation for the purchase.

This element of the proposed safe harbor is intended to create an operational barrier to requiring the purchase of an additional product as a condition of providing a reverse mortgage. In the Board's view, a purchase several days after reverse mortgage funds are available to a consumer is more likely to be voluntary than a purchase closer in time to consummation or account opening of a reverse mortgage. Consumers will be more adequately prepared to make decisions about purchasing additional products when they have several days after consummation or account opening to consider whether to enter into a reverse mortgage and also to purchase another financial or insurance product. A reverse mortgage, as any other home mortgage, is a major financial undertaking requiring the consumer to contemplate considerable details, review voluminous paperwork, and make numerous decisions at and around the time of closing. But reverse mortgages are particularly complex loan products that carry special risks; consumers need ample time before and after the transaction to understand them.

The proposal may also have the effect of curtailing instances of consumers believing (or being led to believe) that the purchase of another product is required to complete the reverse mortgage transaction when it is not. In rescindable transactions, for example, proceeds typically may not be disbursed until after the consumer's right to rescind has expired, which is three business days after account-opening or consummation. Thus, if a consumer consummates the reverse mortgage on Monday, June 1, the consumer typically would have access to the reverse mortgage funds on Friday, June 5 (i.e., the day after the consumer's right to rescind has expired). The 10-day waiting period would extend until Thursday, June 11, however. The condition that the reverse mortgage transaction and the purchase of another product be separated by 10 days ensures that consumers are less susceptible to high-pressure sales tactics that might occur at or immediately after consummation or account opening, but before funds are available. Finally, the proposal has the added consumer benefit of giving consumers a "cooling off" period of several days after reverse mortgage funds are available to consider whether using that money to buy another financial or insurance product is a sound financial choice.

Comment 40(a)(2)(B)–1 obligated to purchase. Proposed comment 40(a)(2)(ii)–1 states that whether a consumer has become obligated to purchase a financial or insurance product will be a factual inquiry. This comment provides guidance on when a consumer becomes obligated to purchase a product through two examples. First, a consumer would become obligated to purchase a financial or insurance product, for example, when the consumer signs an agreement to purchase the product, even if the purchase will occur in the future. Second, a consumer would also become obligated to purchase a product when the consumer signs an agreement to purchase a product but has the option to cancel the purchase for a period of time after the purchase occurs. Finally, proposed comment 40(a)(2)(ii)–1 provides the following example to explain the effect of the 10-calendar-day waiting period: If a consumer consummates a reverse mortgage on Monday, June 1, the creditor will qualify for the safe harbor only if the consumer does not sign an agreement to purchase another financial or insurance product from the parties enumerated in this paragraph until Thursday, June 11, at the earliest.

The Board requests comment on the utility and appropriateness of the guidance in the proposed commentary regarding when a reverse mortgage consumer becomes obligated to purchase another financial or insurance product. The Board solicits comment on whether and what additional examples may be warranted.

Persons From Whom the Consumer may not Purchase a Product

Creditor, loan originator, or affiliate of either. The proposed safe harbor waiting period is intended to eliminate incentives for the creditor or loan originator to require a consumer to purchase another product or service to obtain the reverse mortgage. Thus, the persons from whom a consumer cannot have purchased another product or service within 10 days of consummation are the creditor, loan originator, and any affiliate of either. See proposed § 226.40(a)(2)(ii)(A)–(C). The Board believes that a product purchased from one of these parties would confer a financial benefit on the creditor or loan originator that may give the creditor or loan originator an incentive to require the purchase.

Nonaffiliated third party. The safe harbor would also prohibit, within the 10-calendar-day waiting period, the consumer's purchase of a product or service from a nonaffiliated third party if the creditor or loan originator, or an affiliate of either, would receive compensation for the purchase. Proposed comment 40(a)(2)(ii)(D)–1 is intended to clarify that compensation would be considered to be received by a creditor, loan originator, or an affiliate of either with respect to a particular purchase, if any of these parties receives a fee because the consumer purchased the ancillary product.

For further guidance, this comment also gives an example of a situation in which a creditor would not be deemed to have received compensation for a consumer's purchase of an ancillary product. Specifically, the comment states that a creditor does not receive compensation for a consumer's purchase of an ancillary product if the creditor sells a customer list to a nonaffiliated third party, which, in turn, sells a financial or insurance product to a reverse mortgage consumer on the list within the 10-day waiting period, as long as the creditor receives no compensation directly or indirectly related to whether the consumer purchases the product. The Board intends with this example to clarify that the safe harbor does not prohibit practices that may result in compensation to the creditor, loan originator, or affiliate, when the compensation received would be too attenuated from the purchase of the ancillary product to create a realistic incentive for the creditor or loan originator to engage in prohibited product tying.

The Board requests comment on the appropriateness and efficacy of the proposed safe harbor and accompanying commentary for addressing the problem of inappropriate product tying in reverse mortgage transactions.

Disbursements Directly to the Consumer

The HECM rules require that reverse mortgage proceeds must be disbursed directly to the consumer "at the initial disbursement or after closing (upon expiration of the 3-day rescission period under 12 CFR part 226, if applicable)," except for certain payments related to the mortgage transaction. The following disbursements are excepted from the requirement to disburse HECM proceeds directly to the consumer: (1) Disbursements to a relative or legal representative of the mortgagor, or a trustee for the benefit of the mortgagor; (2) disbursements for the initial mortgage insurance premium required for the HECM; (3) fees that the mortgagee is authorized to collect under the HECM rules; (4) amounts required to discharge any existing liens on the property; (5) annuity premiums if disclosed as part of the TALC disclosure required in current § 226.33; and (6) funds required to pay contractors who performed repairs as a condition of closing, in accordance with standard FHA requirements for repairs required by appraisers.[153]

The Board believes that the proposed disclosure requirement and 10-day waiting period to qualify for the "safe harbor" will sufficiently protect consumers from harmful product tying in reverse mortgage transactions; thus, the Board does propose to require that reverse mortgage proceeds be disbursed only to the consumer. The Board is also concerned that the term "initial" disbursement may be difficult to define clearly, especially in open-end reverse mortgage transactions where the consumer might not draw on the line until well after account opening. A rule covering disbursements beyond those occurring at or immediately after account opening, however, may be overly broad. For example, requiring that proceeds be disbursed directly to the consumer one year after account opening would be unnecessary to stop the creditor from requiring the consumer to purchase another product as a condition of obtaining the reverse mortgage; the consumer would already have the reverse mortgage.

The Board requests comment on whether the Board should adopt disbursement restrictions similar to those that apply to HECMs for proprietary reverse mortgages, including specific reasons why commenters believe that the Board should or should not do so.

40(b) Counseling

The Board is concerned that consumers seeking reverse mortgages may not be sufficiently aware of the risks, obligations, and financial implications of reverse mortgages solely through disclosures provided during the origination process. The Board's consumer testing of reverse mortgage disclosures revealed that even more sophisticated consumers do not readily understand how reverse mortgages work and their impact on a consumer's financial future. As discussed above in the section-by-section analysis to proposed § 226.33(a)–(d), the Board proposes comprehensive revisions to TILA's reverse mortgage disclosures, which the Board anticipates will significantly improve consumer understanding of these complex transactions. As discussed further below, however, the Board believes that the complexity of and risks associated with reverse mortgages warrant added consumer protections, including a requirement that counseling occur before the consumer obtains a reverse mortgage and at least three business days before a consumer has to pay a nonrefundable fee in connection with a reverse mortgage transaction (except a fee for the counseling).

Background

Prospective borrowers must receive counseling before obtaining a HECM.[154] In addition, several states have enacted reverse mortgage counseling rules.[155] Federal law does not require prospective borrowers of proprietary reverse mortgages to obtain counseling.

Counseling Requirements for HECMs

Referrals. When a potential HECM borrower first contacts or communicates with an FHA-approved HECM mortgagee, the mortgagee must provide the borrower with contact information for ten HUD-approved counseling agencies.[156]

Timing. A HECM mortgagee may not begin "processing" a HECM loan application before receiving a certificate confirming that the borrower has received reverse mortgage counseling.[157] According to HUD guidance, this means that a mortgagee may accept a borrower's application before receiving the counseling certificate, but "may not order an appraisal, title search, or FHA case number or in any other way begin the process of originating a HECM loan." [158] The mortgagee also may not charge an application fee or any other HECM-related fees before the mortgagee receives a required HECM counseling certificate indicating that counseling has been completed.

Content. HECM counselors must provide information on, among other topics: (1) The financial implications of entering into a HECM; (2) the consequences of a HECM on the borrower's taxes, estate, and eligibility for assistance under Federal and state programs; (3) other home equity conversion options, such as sale-leaseback financing; (4) additional financial options such as other housing, social service, health, and financial options (provided through the government or non-profit organizations, for example); and (5) the circumstances under which the HECM becomes due.[159]

Counselor independence. HECM mortgagees are prohibited from steering, directing, recommending, or otherwise encouraging a consumer to choose a particular counseling agency.[160] They also may not contact a counselor or counseling agency to refer a consumer or discuss a consumer's personal information.

In 2008, Congress expanded these general restrictions by prohibiting certain parties from directly or indirectly compensating or being associated with a counselor or counseling agency; specifically, any party "involved in": (1) "originating or servicing the mortgage"; (2) "funding the loan underlying the mortgage"; or (3) "the sale of annuities, investments, long-term care insurance, or any other type of financial or insurance product." [161] To implement these measures, HUD issued a Mortgagee Letter prohibiting lenders from paying counseling agencies, directly or indirectly, for HECM counseling services through either a lump-sum payment or on a case-by-case basis.[162] The Mortgagee Letter indicates that a lender would "indirectly" pay for HECM counseling by "funneling payment for HECM counseling through a nonprofit, foundation, association or any other entity or organization that is a branch of,

[153] *See* 24 CFR 206.29.

[154] *See* 12 U.S.C. 1715z–20(d)(2)(B) and (f); HECM Handbook 4235.1 REV–1, ch. 2–1.

[155] *See* Ariz. Rev. Stat. §§ 6–1602, 1603A; Ark. Code Ann. § 23–54–106(a); Cal. Civ. Code §§ 1923.2(j) and (k), 1923.5(a); Colo. Rev. Stat. § 11–38–111; Del. Code Ann. Tit. 5 §§ 2118 and § 2244; 205 Ill. Comp. Stat. Ann. § 5/6–1; Md. Fin. Inst. Code Ann. §§ 12–1219, 12–1221; Mass. Gen. Laws Ann. Ch. 167E, § 7(e); Mo. Rev. Stat. § 53–270(6); N.Y. Real Property Law §§ 280(2)(g) and 280–a(2)(j); N.C. Gen. Stat. §§ 53–257(4), 53–264(b), 53–269, 53–270(6); S.C. Code Ann. § 29–4–60; Tenn. Code Ann. §§ 47–30–102(4), 47–30–104(c), 47–30–115(6), 47–30–109(b); Tex Const. Art. 16 § 50(k)(8); Utah Code Ann. § 61–2d–112; Vt. Stat. Ann. Tit. 8 § 10702; W.Va. Code § 47–24–7(b).

[156] HUD Mortgagee Letter 2009–10 (March 27, 2009).

[157] HECM Handbook 4235.1 REV–1, ch. 2–1, 2–3; HUD Mortgagee Letter 2004–25 (June 23, 2004).

[158] HUD Mortgagee Letter 2004–25 (June 23, 2004).

[159] HECM Handbook 4235.1 REV–1, ch. 2–5; HUD Mortgagee Letter 2004–25 (June 23, 2004).

[160] HUD Mortgagee Letter 2004–25 (June 23, 2004).

[161] HERA § 2122(a)(3) (codified at 12 U.S.C. 1715z–20(d)(2)(B)).

[162] HUD Mortgagee Letter 2008–28 (Sept. 29, 2008).

affiliated with or associated with a lending institution." Neither the statute nor HUD's Mortgagee Letter indicates whether a creditor or other person is prohibited from, for example, making charitable donations designated for general purposes to a non-profit organization that offers multiple services that include reverse mortgage counseling, or whether this rule prohibits arranging for the consumer to finance the counseling fee as part of the reverse mortgage transaction.

Counseling protocol. HUD has previously issued a "Counseling Protocol," which includes additional counseling requirements.[163] HUD issued an updated and expanded Counseling Protocol that will go into effect on September 11, 2010.[164]

Interagency Supervisory Guidance on Reverse Mortgages

Through the FFIEC, the Board and other Federal banking agencies recently stated in the Final Reverse Mortgage Guidance that reverse mortgage borrowers "do not consistently understand the terms, features, and risks of their loans." [165] Thus, despite concerns about whether counseling is uniformly effective, the agencies stated further that counseling for borrowers of proprietary reverse mortgages is necessary to "promote consumer understanding and manage compliance risks."§ [166]

Timing. The Guidance advises institutions to require consumers to have received counseling before the consumer submits a reverse mortgage application or pays an application fee.

Content. The Final Reverse Mortgage Guidance states that counseling sessions should cover a range of information, largely consistent with information required for HECM counseling. This information includes, for example, "[t]he availability of other housing, social service, health, and financial options" and "[t]he financial implications and tax consequences of entering into a reverse mortgage." In addition, the Guidance advises that counseling sessions should cover, among other topics, "[t]he differences between HECM loans and proprietary reverse mortgages."

Counselor independence. Under the Guidance, institutions offering proprietary reverse mortgages should ensure the independence of counselors by adopting policies that prohibit the following:

- Steering a consumer to any one particular counseling agency.
- Contacting a counselor to discuss a particular consumer, a particular transaction, or the timing or content of a counseling session "unless the consumer is involved."

Outreach

During Board outreach for this proposal and in comments on the Proposed Reverse Mortgage Guidance, representatives of the reverse mortgage industry uniformly affirmed the importance and value of counseling for reverse mortgage borrowers and generally agreed that creditors should ensure that prospective borrowers of proprietary reverse mortgages receive counseling. The National Reverse Mortgage Lenders Association (NRMLA) commented that the Federal banking agencies should deem the HECM counseling rules "best and prudent practices" for institutions offering proprietary products. Several industry representatives, however, expressed concerns that the counseling network is underfunded and understaffed, resulting in long wait times for prospective borrowers and lower quality counseling.

Consumer advocates have expressed support for requiring consumer counseling in all reverse mortgage transactions. They caution, however, that counseling alone may insufficiently protect consumers against abusive practices.[167] Like industry representatives, consumer advocates question the effectiveness of counseling due to inadequate funding and the limited availability of trained counselors. Some consumer advocates therefore favor not only strengthening counseling, but also requiring lenders and brokers to assess the suitability of a reverse mortgage for each borrower before making a loan.[168] *See* "Suitability," below.

Reverse mortgage counselors consulted by the Board expressed differing views on a range of counseling issues. They differed on when counseling should occur; some suggested that counseling was best after the consumer had transaction-specific documents to review with the counselor, while others thought that counseling was optimal earlier in the process as an aid to informed consumer shopping. On counseling content, counselors generally expressed concerns that requirements such as having to complete a full budget for the consumer to determine the appropriateness and affordability of a reverse mortgage would be too difficult and time-consuming. Some advocated requiring additional content, such as information about the general differences between proprietary reverse mortgages and HECMs.

On counselor independence, some counselors shared anecdotally that creditors have compromised counselor independence by providing the required list of HECM counselors, while orally "recommending" particular counselors. At least one expressed support for Congress's ban on creditors directly or indirectly paying HECM counselors (discussed above), stating that this has stopped significant abuses. All, however, shared the view that lack of funding for counseling is a significant and growing problem.

The Board's Proposal

Based on its research and outreach, the Board believes that originating a reverse mortgage before the consumer has obtained counseling should be considered an unfair practice under Regulation Z. The Board also believes that imposing a nonrefundable fee on a prospective reverse mortgage consumer within three days after a consumer has obtained counseling should be considered unfair. The Board therefore proposes to prohibit these practices under its authority in TILA Section 129(*l*)(2)(A) to prohibit practices in connection with mortgage lending that the Board finds unfair or deceptive. 12 U.S.C. 1639(*l*)(2)(A). The Board does not intend to suggest that these practices are unfair prior to the effective date of any final rule implementing these proposed prohibitions. Prior to the effective date of a final rule, the Board expects that whether these practices are unfair will be judged on a case-by-case basis and on the totality of the circumstances under applicable laws and regulations.

The proposed counseling requirement would apply to HECMs as well as to proprietary reverse mortgages. While counseling is already required for HECMs, a private action may not be brought against a mortgagee for failure to comply with the counseling requirements; TILA Section 130, however, gives consumers a private right of action. 15 U.S.C. 1640. Consequently, the Board's proposal is intended in part to level the playing field between HECM and proprietary reverse mortgage originators. As discussed below, the Board is also proposing to provide that compliance

[163] HUD, HECM Counseling Protocol (December 2006).

[164] See HUD Handbook 7610.1 (05/2010) *http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/7610.1/76101HSGH.pdf* (visited July 15, 2010).

[165] Final Reverse Mortgage Guidance, 75 FR at 50809.

[166] *Id.* at 50811.

[167] NCLC Report at 18.

[168] *Id.* at 19.

with the HECM counseling rules satisfies the Board's rule.

Substantial consumer injury. Uninformed reverse mortgage consumers stand to lose substantial equity in their most valuable asset—their home—at a time when they may be least able to recover financially. This loss could jeopardize a consumer's health and fundamental well-being. Home equity is a critical financial resource for reverse mortgage borrowers, who generally must be 62 years of age or older. Borrowers in this age group are more likely to be retired than younger borrowers, and thus tend to have more limited income sources. Should emergency expenses arise or the cost of living increase higher than expected, home equity may be the only resource for these consumers.

Reverse mortgage borrowers also risk foreclosure if they do not clearly understand important facts about reverse mortgages. These include the consequences of failing to pay property taxes and insurance directly (rather than relying on the lender to do so, as is common with some traditional "forward" mortgages), moving out of the home for an extended period, or failing to maintain the property. Borrowers aged 62 or older may be more likely to face physical constraints on their mobility than younger borrowers, and so as a practical matter may be less able to find affordable alternative housing should they lose their home.

In addition, uninformed or misinformed reverse mortgage borrowers may unknowingly compromise their goals to leave assets for their heirs, undermining not only their personal financial objectives that may have taken years to achieve, but also their heirs' financial prospects. Finally, Board research and outreach has indicated that many consumers choose reverse mortgages if they have few or no other options; at age 62 or older, they may be on a fixed income or otherwise have limited financial resources. Consequently, reverse mortgage consumers may be especially vulnerable to pressure to go through with a reverse mortgage transaction if they have to pay nonrefundable fees before they have received adequate information to make an informed decision about whether the transaction is appropriate for them.

Injury not reasonably avoidable. Without counseling, prospective reverse mortgage borrowers may not reasonably be able to avoid these injuries. If counseling is not required, creditors and financial advisors may not be aware of or inform consumers of counseling resources. Consumers could receive information about reverse mortgages from other sources, such as the Internet, but these sources may provide conflicting and confusing information, and be too voluminous for consumers to categorize coherently for review. Creditors or financial planners themselves may be willing to provide counseling to consumers, but their guidance and information may be biased by an economic interest in steering the consumer to a reverse mortgage.

As noted above, consumer testing conducted by the Board has shown that consumers need considerable guidance to understand the complexities of reverse mortgages, and that for some prospective reverse mortgage borrowers, disclosures about reverse mortgage costs, features, and risks, while valuable, are not by themselves sufficient. For the same reason, merely informing consumers orally or in a written disclosure that counseling is advisable and available may not ensure that consumers in fact receive sufficient information and guidance.

Finally consumers who have to pay nonrefundable fees after applying for a reverse mortgage, but before they receive counseling, may feel locked into a reverse mortgage transaction—even if subsequent counseling creates doubt about whether a reverse mortgage is right for them. Consumers on a fixed income or with otherwise limited resources, as many reverse mortgage borrowers are, may be especially vulnerable to this pressure. A primary purpose of counseling is to ensure that the consumer freely chooses a reverse mortgage, based on an informed conclusion that the reverse mortgage is truly suitable for that consumer. The imposition of nonrefundable fees on consumers before they have had a chance to consider the information received through counseling may render counseling ineffective in accomplishing this purpose.

Injury not outweighed by countervailing benefits. The potential injury to consumers described above may not be outweighed by the potential benefits of *not* requiring counseling. Benefits of not requiring counseling might include that consumers would save the counseling fee and potentially be able to obtain reverse mortgages more quickly to receive needed cash sooner. Creditors might also benefit by being able to make more reverse mortgages in a shorter timeframe. Creditors might be more likely to enter the reverse mortgage marketplace if counseling is not required, increasing competition.

In the Board's view, however, these potential benefits may not outweigh the possibility of severe negative consequences to reverse mortgage consumers' financial well-being. Moreover, any increased competition due to higher reverse mortgage volume would be offset by the detriment to competition resulting from uninformed consumers. Informed consumers are able to shop more effectively than uninformed consumers, driving the market to produce more affordable loan products with features better tailored to consumers' needs and preferences.

40(b)(1) Counseling Required

Under proposed § 226.40(b)(1), a creditor or other person may not originate a reverse mortgage before the consumer has obtained counseling from a counselor or counseling agency that meets the counselor qualification standards established by HUD pursuant to its authority under the National Housing Act, as amended (NHA),[169] or "substantially similar" standards. *See* 12 U.S.C. 1715z–20(f).

Counselor Qualifications

For several reasons, the Board proposes to require that counselors meet HUD's qualification standards for HECM counselors, or standards that would require a similar level of training and knowledge to those required for HUD-approved counselors. First, the Board recognizes that HUD has developed and continues to improve a comprehensive system of certifying counselors to provide required counseling on reverse mortgages under the HECM program. Second, the Board learned through outreach with creditors and reverse mortgage counselors that proprietary reverse mortgage creditors have routinely required borrowers to obtain counseling from HUD-approved counselors, indicating that the Board's proposal would not be unduly burdensome. Finally, the Board believes that consumer protection can be served through a counseling requirement only if counselors are properly trained to provide germane, consistent, and detailed information about reverse mortgages to consumers.

The Board requests comment on the potential benefits and drawbacks of this aspect of the proposal. In particular, the Board acknowledges concerns expressed during outreach that the quantity of counselors may be insufficient to meet the demand for counseling and requests comment on the potential effects of the proposed qualification standards on the reverse mortgage market for both HECMs and proprietary products. The Board also requests comment on the appropriateness of allowing counselors

[169] 12 U.S.C. 1701 *et seq.*

to meet qualification standards that are "substantially similar" to those established by HUD, such as standards that might be developed by a state.

Originating a Reverse Mortgage

The Board proposes to prohibit originating a reverse mortgage before the consumer has obtained counseling from a HUD-approved or similarly qualified counselor. As noted above, the HECM program requires counseling before a HECM mortgagee may "process" an application, meaning that the mortgagee may accept an application, but "may not order an appraisal, title search, or an FHA case number or in any other way begin the process of originating a HECM loan" before the consumer has received counseling.[170] The Board proposes to take a different position in proposed comment 40(b)(1)–1, which states that a creditor or other person may not "open a reverse mortgage account (for an open-end reverse mortgage) or consummate a reverse mortgage loan (for a closed-end reverse mortgage) before the consumer has obtained the counseling required under § 226.40(b)(1)." The proposed comment explains that a creditor or other person may accept an application for a reverse mortgage and may also begin processing the application (by, for example, ordering an appraisal or title search) before the consumer has obtained counseling. As discussed below, however, the Board is also proposing that the creditor not be permitted to impose a nonrefundable fee before the consumer has obtained counseling.

The proposed rule is intended to establish a bright line basis for determining the time by which counseling must have occurred—origination. The Board believes that this approach will provide greater clarity to proprietary reverse mortgage creditors subject to the proposed counseling rule. The proposal will facilitate compliance, because creditors and others would not have to question whether a particular activity related to a consumer's application is considered part of "processing" the application and therefore prohibited. A more precise rule is especially important where, as here, creditors are subject to a private right of action for violations. At the same time, consumers would be protected because, as discussed below, the proposal would also require a creditor to refund any fees that the consumer paid if the consumer decides, within three business days after receiving counseling, not to proceed with the transaction. *See* proposed § 226.40(b)(2) and comment 40(b)(2)(i)–1.

Allowing creditors and others to engage in the full range of application processing activities before receiving confirmation of counseling may in some cases allow them to produce transaction-specific documents that the consumer could then review with the counselor. In outreach, some reverse mortgage counselors expressed the view that counseling can be particularly effective when transaction-specific documents are available. The proposed rule, however, would also permit counseling to be obtained earlier in the process, such as before application, equipping the consumer to engage in more informed shopping.

Proposed comment 40(b)(1)–2 provides that a creditor may rely on a certificate of counseling in a form approved by HUD pursuant to 12 U.S.C. 1715z–20(f), or a substantially similar form, to confirm that the consumer received the required counseling. HUD's current Certificate of HECM Counseling requires the names, addresses and signatures of the homeowners receiving counseling (namely, all persons shown as homeowners on the deed); a list of seven topics required to be covered in HECM counseling sessions; and spaces for the name, contact information, employer information, and signature of the counselor.[171] The Certificate of HECM Counseling also requires an indication of how the interview was held (face-to-face or by telephone), how long the session lasted, how much was charged for the session, and whether the fee was paid up front, financed or waived. Finally, the Certificate requires the date of counseling and the "certificate expiration date," which is 180 days from the date of the counseling session.

The Board's proposed counseling rule applies not only to HECMs, but also to proprietary reverse mortgages. Hence the Board proposes to give creditors the flexibility of relying on a "substantially similar" form, which the Board believes should include information sufficient to confirm, at a minimum, that the consumer received counseling in accordance with the requirements in the proposed rule for counselor qualifications and the date of the counseling session. The Board understands that many proprietary reverse mortgage creditors have required that counseling be verified with the Certificate of HECM Counseling and requests comment on whether the proposed safe harbor allowing creditors to rely on a form "substantially similar" to the Certificate of HECM Counseling is appropriate.

40(b)(2) Nonrefundable Fees Prohibited

Paragraph 40(b)(2)(i)

Under the proposal, neither a creditor nor any other person may impose a nonrefundable fee in connection with a reverse mortgage subject to § 226.33 until after the third business day following the consumer's completion of counseling. *See* proposed § 226.40(b)(2)(i) and accompanying commentary. With this proposal, the Board seeks to address concerns that consumers who have to pay a nonrefundable fee after applying for a reverse mortgage, but before they receive counseling, may feel locked into a reverse mortgage even if they later receive counseling and have doubts about whether a reverse mortgage is a sound choice. As noted above, Board research and outreach have indicated that many consumers choose reverse mortgages if they have few or no other options; at age 62 or older, they may be on a fixed income or otherwise have limited financial resources. The Board therefore is concerned that a reverse mortgage consumer may be especially vulnerable to pressure to go through with a transaction once the consumer has invested money in it that cannot be recouped. A restriction on imposing nonrefundable fees would help ensure that counseling effectively assists consumers in making informed financial choices, because consumers would not be financially committed to a reverse mortgage transaction before receiving comprehensive guidance and information.

For consistency in Regulation Z, this rule is similar to the rule on imposing nonrefundable fees under current § 226.5b(h) and accompanying commentary (redesignated and revised in the August 2009 HELOC Proposal as § 226.5b(e) and comments 5b(e)–1 and –2), which prohibits imposing nonrefundable fees until three business days after a consumer receives the disclosures required by § 226.5b. 74 FR 43428, 43536, 43594, Aug. 26, 2009. As discussed in the section-by-section analysis to § 226.19 above, the Board is proposing a parallel rule for closed-end real property- or dwelling-secured mortgages. *See* proposed § 226.19(a)(1)(iv) and accompanying commentary.

Proposed comment 40(b)(2)(i)–1 clarifies that a creditor or other person may collect a fee, including an application fee, earlier than the expiration of three business days after

[170] HUD Mortgagee Letter 2004–25 (June 23, 2004).

[171] *See* HUD Form 92902 (6/2008).

the consumer obtains counseling. Similarly to comment 5b(h)–1, which explains the implications of the analogous HELOC nonrefundable fee rule, proposed comment 40(b)(2)(i)–1 explains that the creditor or other person must refund the fee if, within three business days of obtaining counseling, the consumer decides not to enter into the reverse mortgage transaction. Unlike current comment 5b(h)–1, however, proposed comment 40(b)(2)(i)–1 does not state that the consumer must be notified that the fee is refundable. The Board proposes to require reverse mortgage creditors to notify the consumer of this refund right as part of the early reverse mortgage disclosures under proposed § 226.33(c), (d)(1) and (d)(3). However, unlike the proposed nonrefundable fee rule, the disclosure requirement is not proposed based on the Board's authority under TILA Section 129 to prohibit unfair or deceptive practices. *See* 15 U.S.C. 1639(*l*)(2)(A). Violations for rules proposed under the Board's Section 129 authority carry enhanced damages. *See* TILA Section 130(a)(4); 15 U.S.C. 1640(a)(4). Therefore, the Board does not propose to refer to this disclosure requirement in comment 40(b)(2)(i)–1, which interprets § 226.40(b)(2), a provision proposed pursuant to the Board's authority under TILA Section 129.

In new comment 40(b)(2)(i)–2, the Board proposes guidance regarding how a creditor or other person may determine when the consumer obtained counseling for purposes of imposing a nonrefundable fee. Specifically, the comment states that a creditor or other person may rely on the date of the counseling session indicated on a certificate of counseling in a form approved by the Secretary of HUD pursuant to 12 U.S.C. 1715z–20(f), or a substantially similar form. A creditor would be free to rely on a consumer's oral representation of the date on which counseling occurred but would incur the risk of this representation later being more difficult to substantiate.

Proposed comment 40(b)(2)(i)–3 explains how the proposed restriction on imposing nonrefundable fees for reverse mortgages interacts with the longstanding restriction on imposing nonrefundable fees for HELOCs subject to § 226.5b. Historically, most reverse mortgages have been open-end mortgages subject to § 226.5b.[172] Consequently, these reverse mortgages have been subject to the restriction on imposing nonrefundable fees before the consumer has received the disclosures required under § 226.5b (also discussed in the section-by-section analysis of § 226.5b, above). Under this proposal, reverse mortgages subject to § 226.5b would still be subject to this restriction, but would also be subject to the restriction under proposed § 226.40(b)(2)(i), which prohibits imposing a nonrefundable fee (other than a counseling fee (see proposed § 226.40(b)(2)(ii))) until three business days after the consumer has obtained counseling. As explained in the section-by-section analysis to proposed 226.33(a) through (d), the Board proposes to move the relevant early disclosure requirements applicable to open-end reverse mortgages from § 226.5b to § 226.33(c) and (d)(1).

Proposed comment 40(b)(2)(i)–3 notes that, for open-end reverse mortgages, a nonrefundable fee generally may not be imposed until both waiting periods have ended and provides two illustrations of the relationship between these restrictions. First, if three business days have elapsed since the consumer received the early disclosures required under proposed § 226.33(d)(1), but fewer than three business days have elapsed since the consumer obtained counseling, the creditor or other person could not impose a nonrefundable fee (other than a fee for required counseling (see proposed § 226.40(b)(2)(ii))) until after the third business day following the consumer's completion of counseling. Similarly, if three business days have elapsed since the consumer obtained counseling, but fewer than three business days have elapsed since the consumer received the early disclosures, the creditor or other person may not impose a nonrefundable fee until after the third business day following the consumer's receipt of the required disclosures.

Comment 40(b)(2)(i)–4.i. Proposed comment 40(b)(2)(i)–4.i explains how the proposed restriction on imposing nonrefundable fees for reverse mortgages interacts with the restriction in § 226.19(a)(1)(ii) on imposing any fees for a closed-end real property- or dwelling-secured mortgage until the consumer has received the early disclosures required under § 226.19(a)(1)(i). Exceptions to this restriction on imposing fees are fees for obtaining a consumer's credit history (§ 226.19(a)(1)(iii)) and, as discussed in the section-by-section analysis to proposed § 226.19(a)(1)(v), fees for required counseling (proposed § 226.19(a)(1)(v)). As discussed in the section-by-section analysis to proposed § 226.33(a) through (d), the Board proposes to move the early disclosure requirements for closed-end reverse mortgages from §§ 226.19 and 226.38 to § 226.33(c) and (d)(3).

Proposed comment 40(b)(2)(i)–4.i provides two illustrations of the relationship between the fee restrictions in § 226.19(a)(1)(ii) and proposed § 226.40(b)(2)(i). First, if the consumer has received the early disclosures, but fewer than three business days have elapsed since the consumer obtained counseling, the creditor or other person could not impose a nonrefundable fee on the consumer (other than a fee for required counseling) until after the third business day following the consumer's completion of counseling. Second, if three business days have elapsed since the consumer obtained counseling, but the consumer has not received the early disclosures, the creditor or other person may not impose any fees—refundable or nonrefundable (except for a fee for obtaining a consumer's credit history or required counseling)—until the consumer has received the early disclosures.

Comment 40(b)(2)(i)–4.ii. Under this proposal, closed-end reverse mortgages would be subject to two restrictions on imposing nonrefundable fees. The first restriction would be under proposed § 226.19(a)(1)(iv), which prohibits imposing a nonrefundable fee (other than a fee for obtaining a consumer's credit history (*see* § 226.19(a)(1)(iii)) and a fee for required counseling (*see* § 226.19(a)(1)(v)) until after the third business day following the consumer's receipt of the early disclosures required under §§ 226.19(a)(1)(i) and 226.33(d)(3). (Again, as discussed in the section-by-section analysis to proposed § 226.33(a) through (d), the Board proposes to move the early disclosure requirements for closed-end reverse mortgages from §§ 226.19 and 226.38 to § 226.33(c) and (d)(3).) The second restriction would be under proposed § 226.40(b)(2), which prohibits imposing a nonrefundable fee (other than a fee for required counseling (*see* § 226.40(b)(2)(ii))) until after the third business day following the consumer's completion of counseling.

Proposed comment 40(b)(2)(i)–4.ii explains that, for closed-end reverse mortgages, a nonrefundable fee generally may not be imposed until both waiting periods have ended and provides two illustrations of the relationship between these restrictions

[172] In fiscal year 2008, for example, most HECM borrowers chose to receive at least part of their payments as a line of credit. Of these borrowers, 89 percent chose to receive their payments exclusively as a line of credit; another 6 percent chose to receive a line of credit in combination with term or tenure payments. *See* U.S. Government Accountability Office, GAO–09–606 at 8 (referencing HUD data).

on imposing nonrefundable fees. First, if three business days have elapsed since the consumer received the early disclosures required under §§ 226.19(a)(1)(i) and 226.33(d)(3), but fewer than three business days have elapsed since the consumer obtained counseling, the creditor or other person may not impose a nonrefundable fee (except for a counseling fee) until after the third business day following the consumer's completion of counseling. Second, if three business days have elapsed since the consumer obtained counseling, but fewer than three business days have elapsed since the consumer received the early disclosures, the creditor or other person may not impose a nonrefundable fee (except a fee for obtaining a consumer's credit history or counseling) until after the third business day following the consumer's receipt of the early disclosures.

Proposed comment 40(b)(2)(i)–5 provides that, for purposes of proposed § 226.40(b)(2)(i), which prohibits imposing a nonrefundable fee until three business days after the consumer has obtained counseling, the term "business day" has the more precise definition used for rescission and certain disclosure purposes: All calendar days except Sundays and the Federal holidays referred to in § 226.2(a)(6). For example, if a consumer were to obtain counseling on Monday, June 1, a creditor could not impose a nonrefundable fee on the consumer until Friday, June 5. If the consumer decided on June 4 not to proceed with the transaction, the creditor would have to refund to the consumer any fees that had been charged before that time for the reverse mortgage transaction.

The Board proposes to use the more precise definition of "business day" for this provision to conform to the Board's proposal to use the more precise definition in the nonrefundable fee rule for open-end mortgage transactions subject to § 226.5b. *See* 74 FR 43428, 43593, Aug. 26, 2009. Under that rule, as discussed above, a creditor or other person may not impose a nonrefundable fee on the consumer until three business days after the consumer has received the disclosures required under § 226.5b. The more precise definition of "business day" also applies to the restriction on imposing fees for closed-end reverse mortgages under § 226.19(a)(1)(ii) and the restriction on imposing nonrefundable fees under proposed § 226.19(a)(1)(iv). *See* comment 19(a)(1)(ii)–1 and proposed comment 19(a)(1)(iv)–1. As noted, the closed-end mortgage fee restriction under § 226.19(a)(1)(ii) prohibits imposing any fees until the consumer has received the early disclosures required under § 226.19(a)(1)(i) (*also see* proposed § 226.33(d)(3)). Proposed § 226.19(a)(1)(iv) would prohibit imposing a nonrefundable fee in connection with a closed-end mortgage before the consumer has received the early disclosures required under § 226.19(a)(1)(i) (also see proposed § 226.33(d)(3)). In both cases, the consumer is deemed to have received the disclosures three business days after the creditor has mailed the disclosures. *See* comment 19(a)(1)(ii)–2 and proposed comment 19(a)(1)(iv)–2. By using the same definition of "business day" for all of these fee restrictions, the Board seeks to alleviate confusion among creditors and others regarding when fees may be imposed, and when obligations to refund fees arise.

Paragraph 40(b)(2)(ii)

To facilitate compliance with the proposed rule on imposing nonrefundable fees, the Board proposes in § 226.40(b)(2)(ii) to exempt from the restriction on imposing nonrefundable fees a bona fide and reasonable fee for required reverse mortgage counseling imposed by a qualified counselor or counseling agency. This proposed provision specifies that the counselor or counseling agency must meet the counselor qualification standards established by the Secretary of HUD pursuant to 12 U.S.C. 1715z–20(f), or substantially similar qualification standards, as proposed in § 226.40(b)(1). Comment 40(b)(2)(ii)–1 clarifies that a fee for required counseling may be collected earlier than the expiration of three business days after the consumer obtains counseling, and does not have to be refunded if the consumer decides not to proceed with the transaction within three business days, as described in proposed comment 40(b)(2)(i)–1.

The Board proposes this exemption because counseling fees are often collected at the point of service by the counselor or counseling agency. These fees are not always connected to a specific reverse mortgage transaction because, under HECM rules and the proposal, a consumer need obtain counseling only once with respect to multiple reverse mortgage applications (as long as fewer than 180 days have elapsed between the time of counseling and the application, as required under proposed § 226.40(b)(4)). In addition, the Board is cognizant of funding concerns for reverse mortgage counseling, and therefore does not believe that counselors and counseling agencies should have to refund fees charged for counseling as prescribed in the proposed rule.

Comparison to HECM Rules

The Board believes that determining how to comply with the proposed restriction on imposing nonrefundable fees until after the third business day following counseling will not pose serious challenges to reverse mortgage providers, because, as noted above in the "Introduction" to § 226.33, historically, most reverse mortgages have been open-end mortgage loans subject to § 226.5b. Consequently, most reverse mortgage providers will be familiar with this general approach to imposing nonrefundable fees. The Board recognizes, however, that HUD's rule on imposing fees for HECMs differs from this proposal. As discussed earlier, HUD guidance indicates that a HUD mortgagee may not charge the borrower an application fee, an appraisal fee, or fees for any other HECM-related services before the mortgagee receives HUD's required Certificate of HECM Counseling.[173] The Board's proposal would cover not only fees imposed by HUD mortgagees, but also fees imposed by any third party that might perform a transaction-related service. The Board believes that this broader coverage is important to protect consumers from being committed to a particular reverse mortgage transaction before having had an opportunity to consider information received during counseling.

Another difference from the HECM rules is that the Board's proposal would permit creditors and others to charge (and collect) fees earlier than three business days after the consumer has obtained counseling. However, these fees would have to be refunded should the consumer decide not to go forward with the transaction within that time period. The Board believes that this approach will facilitate reverse mortgage transactions in a manner that will help consumers make more informed credit decisions. For example, allowing appraisal or other property valuation fees to be charged would enable consumers to know how much money would be available to them before being committed to a particular transaction. Also, consumers would be more likely to have accurate transaction-specific documents to review with a counselor if they may pay a fee for a creditor to process their application. If, after counseling, the consumer decides that the transaction is not the best choice, the consumer would be entitled to a refund of any fees paid. At the same

[173] *See* HUD Mortgagee Letter 2004–25 (June 23, 2004).

time, the proposed restriction on nonrefundable fees would not delay moving forward with transactions as much as a restriction on imposing any fees prior to counseling might. This could benefit consumers who have immediate financial needs.

Finally, the proposal is intended to ensure that consumers have time after counseling to consider whether to proceed with the transaction. Under the HECM rules, once a creditor receives a HECM counseling certificate, the creditor may immediately impose fees on the consumer. Under the proposal, if a creditor receives a HECM counseling certificate one business day after the consumer obtained counseling, the creditor would still have to give the consumer two additional business days to cancel the transaction and receive a refund of fees.

Regarding the new restriction on imposing nonrefundable fees for both open-end and closed-end reverse mortgages, the Board requests comment on the usefulness of illustrations and other guidance in the comments, as well as potential disadvantages and benefits of the proposed restriction.

40(b)(3) Content of Counseling

To ensure that the reverse mortgage counseling provides relevant and useful information to the consumer, the Board proposes to define minimum content requirements for counseling. Specifically, under proposed § 226.40(b)(3), the required counseling must include "information regarding reverse mortgages and their suitability to the consumer's financial needs and circumstances." Proposed comment 40(b)(3)–1 provides a safe harbor for this content requirement: Counseling that conveys the information required by HUD for the HECM program, or substantially similar information. Information required by HUD includes the following, among other topics: (1) The financial implications of entering into a HECM; (2) the consequences of a HECM on the borrower's taxes, estate, and eligibility for assistance under Federal and state programs; (3) other home equity conversion options, such as sale-leaseback financing; (4) additional financial options such as other housing, social service, health, and financial options (provided through government entities or non-profit organizations, for example); and (5) the circumstances under which the HECM becomes due.[174] The Board believes that counseling that conveys this information would satisfy the general requirement that counseling must include "information regarding reverse mortgages and their suitability to a consumer's financial needs and circumstances." *See* proposed § 226.40(b)(3).

To provide flexibility for complying with the content requirement for counseling, the Board also proposes that counseling covering topics that are "substantially similar" to those required for HECMs also would satisfy the requirements of § 226.40(b)(3). The Board recognizes that consumers have varying levels of financial sophistication and diverse financial needs and goals, and that counseling covering additional or alternative topics may therefore be appropriate. These topics might include information about the differences between proprietary reverse mortgages and HECMs or an explanation of the disclosures required for reverse mortgage transactions under proposed § 226.33(b) ("Key Questions to Ask about Reverse Mortgages") and § 226.33(c) (regarding reverse mortgage costs and related information). *See* proposed § 226.33(b) and (c) and accompanying commentary.

The Board requests comment on the proposed requirements and safe harbor for the content of counseling required under § 226.40(b)(3).

40(b)(4) Timing of Counseling

Proposed § 226.40(b)(4) requires counseling for each reverse mortgage transaction to have occurred no earlier than 180 calendar days (six months) prior to the creditor's receipt of the consumer's application. The Board proposes this restriction on the time for which counseling remains valid for two reasons. First, this time limitation is necessary to ensure that the counseling session addresses the consumer's current financial circumstances, assuming that significant changes generally would not have occurred within only six months. Second, the 180-day expiration date for the validity of counseling is generally consistent with the rule applicable to HECM counseling, and thus should require no adjustments on the part of HECM lenders that choose to offer proprietary products.[175] The Board requests comment on whether 180 days prior to application or some other timeframe is an appropriate limit on the period for which counseling is valid.

40(b)(5) Type of Counseling

Proposed § 226.40(b)(5) requires that reverse mortgage counseling occur face-to-face or by telephone. Proposed comment 40(b)(5)–1 is intended to accommodate additional forms of communication that may be characterized as telephone, face-to-face, or both, such as connections over the Internet allowing persons to see one another and communicate in real time. This comment also clarifies that communications via the Internet or similar connection designed to accommodate persons with disabilities, such as those who are visually or hearing impaired, would also meet the requirement that counseling be face-to-face or by telephone.

During discussions with the Board for this proposal and in comments on the Proposed Reverse Mortgage Guidance, industry representatives, consumer advocates, and reverse mortgage counselors did not agree on whether face-to-face counseling should be preferred (or required) over telephone counseling. Consumer advocates generally commented that in-person counseling was better for consumers. At least one consumer advocacy organization, however, opposed requiring in-person counseling because many reverse mortgage consumers lack the mobility required to travel to a counseling session; in addition, conference calls often allow family members across the country or other named owners on the deed of the securing property (*see* proposed § 226.40(b)(7)) to participate in the session.

The Board is not persuaded that either form of counseling is superior in all cases. The Board solicits comment on the proposed rule and guidance regarding the types of counseling permitted, including the absence of a requirement that counseling occur in only one particular form.

40(b)(6) Independence of Counselor

During outreach for this proposal, the Board heard from consumer advocates and reverse mortgage counselors that counselors may not in all cases be impartial advisors. Given certain incentives, counselors may provide guidance that favors a particular reverse mortgage product, regardless of its appropriateness for the consumer. In addition, Congress recently enacted restrictions on how counselors may be compensated to address concerns that counselors may not be independent of creditors and may consequently steer

[174] HECM Handbook 4235.1 REV–1, ch. 2–5; HUD Mortgagee Letter 2004–25 (June 23, 2004).

[175] *See* HUD Form 92902, "Certificate of HECM Counseling," (6/2008) (specifying that the counseling session is valid for 180 days after the date of the session). *See also* HUD Mortgagee Letter 2004–25 (June 23, 2004) (providing that the mortgagee must take the application before the counseling expiration date, but need not close the loan before the expiration date).

consumers to particular reverse mortgage products.[176]

The Board believes that counselor impartiality is essential to ensuring that counseling affords meaningful consumer protection. Without counselor impartiality, the prohibitions on originating a reverse mortgage or imposing a nonrefundable fee on a reverse mortgage applicant before the consumer obtains counseling would be of limited value. The Board has identified two primary incentives that undermine counselor impartiality:

- Receiving compensation from a particular originator. A counselor or counseling agency compensated by a creditor or mortgage broker may present biased information about reverse mortgages intended to steer the consumer to the creditor's or mortgage broker's product.
- Receiving consumers for counseling through referrals by a particular originator. If a counselor or counseling agency counsels only prospective borrowers referred by a single originator, that counselor may be motivated to steer consumers to that originator's products.

This proposal therefore incorporates two provisions designed to promote counselor independence: one restricting compensation for counseling services and another prohibiting creditors or others from steering consumers to particular counselors or counseling agencies.

40(b)(6)(i) Counselor Compensation

Proposed § 226.40(b)(6)(i) prohibits a creditor or any other person involved in originating a reverse mortgage from compensating a counselor or counseling agency for providing reverse mortgage counseling with respect to a particular transaction. As noted earlier, in 2008 Congress broadly prohibited parties involved in originating or servicing a HECM, or in selling any financial or insurance product, from directly or indirectly paying a counselor or being associated in any way with the counselor.[177] To implement these measures, HUD issued a Mortgagee Letter prohibiting lenders from paying counseling agencies, directly or indirectly, for HECM counseling services.[178]

The Board proposes a similar rule that would prohibit creditors and other persons involved in originating a reverse mortgage, such as mortgage brokers, from compensating a counselor or counseling agency for providing the counseling required under proposed § 226.40(b)(1) for a particular transaction. See proposed § 226.40(b)(6)(i). Proposed comment 40(b)(6)(i)–1, however, clarifies that a creditor or other person would not violate this provision by arranging for the counseling fee to be financed as part of a reverse mortgage transaction. Even though financing counseling fees may involve the creditor or other person remitting funds from the financed transaction to the counselor, this provision is intended to retain consumers' options for paying for counseling without creating unnecessary compliance risk.

The Board believes that the proposed compensation rule will curtail the practice of counselors promoting a particular reverse mortgage product or provider. In the Board's view, a more precise rule prohibiting compensation for counseling with respect to a particular transaction, rather than a rule prohibiting any financial assistance for counseling services generally, is appropriate where, as under TILA, violations trigger a private right of action. By contrast, the recent amendments to the NHA's HECM provisions under the HERA are not enforceable through private action.[179] In addition, the Board has frequently heard concerns that counseling resources are limited, and that funding for counseling is inadequate. As a result, the Board has reservations about expressly prohibiting reverse mortgage providers from providing any financial assistance to non-profit counseling agencies. Donations that are not related to a particular transaction could help ensure that needed counseling is available for more consumers.

At the same time, the Board is concerned that these donations may in some cases compromise counselor independence. For example, donations by a creditor to a counseling agency could compromise counselor independence if the donations occur on a regular basis, and are tied in amount to the number or value of transactions made by the donating creditor to consumers counseled by the recipient counseling agency. The Board also notes, however, that RESPA's prohibition on referral fees for settlement services (which include originating a mortgage loan)[180] may already deter donations designed to secure more business for the donating reverse mortgage provider.

With these considerations in mind, the Board requests comment on whether to adopt additional or alternative restrictions on compensation of counselors or counseling agencies by persons involved in originating reverse mortgages.

40(b)(6)(ii) Steering

The second provision designed to promote counselor independence is proposed § 226.40(b)(6)(ii), which prohibits steering a consumer to a particular counselor or counseling agency. In the Board's view, without this prohibition, the rule requiring counseling would be ineffective. Absent a steering prohibition, a creditor could send the consumer to a counselor who is a family member or personal friend, for example, and with whom the creditor has a tacit or express agreement to refer clients in exchange for preferable treatment of the creditor's products in the counseling session.

Whether steering of this type has occurred is a case-by-case determination and may be difficult to discern. Accordingly, the Board has proposed in § 226.40(b)(6)(ii) a "safe harbor" for compliance with this anti-steering rule. The safe harbor would permit a creditor or other person involved in originating a reverse mortgage to ensure compliance with the rule by providing to the consumer a list of at least five HUD-approved counselors or counseling agencies. Comment 40(b)(6)(ii)–1 clarifies that a creditor or other person that does not provide a list of five counselors or counseling agencies has not in all cases violated this provision. The comment points out, for example, that when the consumer has received qualifying counseling prior to contacting (or being contacted by) a creditor, broker, or other person offering or promoting reverse mortgages, the consumer would not need a list of counselors or counseling agencies from that creditor or other person. Here, the concern about the creditor steering the consumer to a particular counselor would be irrelevant.

The list proposed to constitute a safe harbor must include at least five counselors or counseling agencies, although the Board is aware that HECM rules require mortgagees to provide to

[176] HERA § 2122(a)(3) (codified at 12 U.S.C. 1715z–20(d)(2)(B)) (prohibiting parties involved in originating or servicing a HECM, or in selling any financial or insurance product, from directly or indirectly paying a counselor or being associated in any way with the counselor).

[177] *Id.*

[178] HUD Mortgagee Letter 2008–28 (Sept. 29, 2008).

[179] *See, e.g.,* 12 U.S.C. 1735f–14(b)(1)(H) (granting the Secretary of HUD authority to impose civil money penalties against a mortgagee who knowingly and materially violates any provision of Title II of the National Housing Act, as amended ("NHA"), 12 U.S.C. 1707 *et seq.,* or any implementing regulation or handbook issued under the NHA, including provisions under the HECM program pursuant to Section 255(d) of the National Housing Act, 12 U.S.C. 1715z–20).

[180] 12 U.S.C. 2607; 24 CFR 3500.14.

the consumer a list of at least ten counseling agencies.[181] The Board is concerned that it may be unreasonable to require a list of at least ten counselors or agencies for proprietary reverse mortgage transactions. In particular, the Board is concerned that fewer counselors and agencies may have the expertise to provide information about proprietary reverse mortgages than HECMs.

The Board requests comment on the proposed approach to curtailing steering of consumers to particular counselors or counseling agencies. The Board solicits comment on whether there are other situations in which a list may not be necessary, or in which the creditor or other person would not be able to meet the safe harbor but should still be deemed to comply with proposed § 226.40(b)(6)(ii). The Board also requests comment on whether a list of fewer or more than five counselors or agencies should be required to qualify for the proposed safe harbor.

Communications With Counselors

The Board is not proposing limitations on a creditor or other person's communications with counselors. Parties consulted during the Board's outreach for this proposal disagreed on whether restrictions on originators' contacting counselors compromised counselor independence. Consumer advocates generally support prohibitions on communications between counselors and creditors or other key participants in reverse mortgage originations. Industry representatives have raised concerns that restrictions on communication could prevent counselors with questions about an institution's proprietary reverse mortgage product from obtaining information critical to the consumer. Reverse mortgage counselors consulted by the Board indicated that freedom to communicate with a creditor to clear up questions about a particular transaction can enhance the quality of counseling and consumer understanding.

The anti-steering proposal is intended to address harmful practices, not to stop communications that may be beneficial to consumers. The Board invites comment on whether and what specific restrictions on communications between counselors and key participants in reverse mortgage originations (such as creditors, brokers, and correspondents) would be appropriate.

[181] HUD Mortgagee Letter 2009–10 (March 7, 2009).

40(b)(7) Definition of "Consumer"

Proposed § 226.40(b)(7) provides that, for purposes of the proposed counseling requirements under § 226.40(b)(1), the meaning of "consumer" includes all persons who, at the time of origination of a reverse mortgage subject to § 226.33, will be shown as owners on the property deed of the dwelling that will secure the applicable reverse mortgage. Under this proposed definition, however, for purposes of § 226.40(b)(2), which prohibits a creditor or other person from imposing a nonrefundable fee in connection with a reverse mortgage until after the third business day following the consumer's completion of counseling, the term "consumer" includes only persons who will be obligors on the applicable reverse mortgage. The Board proposes this clarification based on its authority under TILA Section 105(a) to prescribe regulations containing classifications, differentiations, or other provision as in the judgment of the Board are necessary or proper to effectuate the purposes of TILA. 12 U.S.C. 1604(a). This clarification is necessary in reverse mortgage transactions because all owners may have to pay off the mortgage themselves to retain homeownership if the party obligated on the note dies or moves out. In addition, the Board's proposal conforms to the HECM rule requiring counseling for all named owners listed on the property deed.[182] Thus, the proposed rule is especially appropriate for HECMs, for which all parties on the property deed must meet HUD's mortgagor qualification standards and all are obligated on the mortgage.[183]

The Board believes that creditors should not have to wait for all owners shown on the deed to obtain counseling before beginning to process the reverse mortgage application. A creditor would have to order a title search to obtain that information, which gives rise to a title search fee. Moreover, in some cases, certain parties on the deed may not use the securing property as their principal dwelling and may be difficult to locate. For these reasons, the Board proposes to require that only parties who will be obligors on the reverse mortgage—in most instances, those who have applied for the reverse mortgage—be required to have obtained counseling before a nonrefundable fee may be imposed under proposed § 226.40(b)(2).

The Board requests comment on whether requiring counseling for all persons who, at the time of origination of a reverse mortgage subject to § 226.33, will be shown as owners on the property deed of the dwelling that will secure the applicable reverse mortgage is appropriate for proprietary reverse mortgages, which may have different requirements and features than HECMs.

[182] HUD Mortgagee Letter 2004–25 (June 23, 2004).

[183] *See, e.g.,* 24 CFR 206.35.

Suitability

Background

For this proposal, the Board examined whether reverse mortgages are a product for which suitability standards are warranted because reverse mortgages are complex and the population for which reverse mortgages are intended—typically consumers 62 years of age or older—may be more vulnerable than younger consumers to the potential adverse consequences of obtaining inappropriate financial products. In this regard, the Board considered whether the practice of making a reverse mortgage without evaluating whether the product is suitable for the consumer is unfair or deceptive, and thus should be banned under the Board's authority to prohibit practices that are unfair or deceptive in mortgage transactions. TILA § 129(*l*)(2)(A), 15 U.S.C. 1639(*l*)(2)(A).

Some consumer advocates have recommended imposing a fiduciary "duty of good faith and fair dealing" on reverse mortgage originators, which would include a duty to assess whether a reverse mortgage is suitable for the consumer.[184] In addition, the Code of Ethics of the National Association of Reverse Mortgage Lenders (NRMLA) includes a number of provisions requiring members to act in the best interests of their customers.[185] The Board is also aware that the Securities and Exchange Commission (SEC) has approved, and most states have adopted, suitability standards for the sale of annuities; the Board recognizes that annuities function similarly to many reverse mortgage transactions in that the consumer exchanges something of value for the right to receive regular payments.[186]

Determination

At this time, the Board is not proposing a finding that originating a reverse mortgage without assessing the transaction's suitability for the

[184] NCLC Report at 18–19 (Oct. 2009).

[185] Nat'l Ass'n of Reverse Mortgage Lenders, Code of Ethics & Professional Responsibility: Ethics Standards Complaint Procedures, Values 1, 3, and 5; Rules 107, 108, 501, 502 (revised June 16, 2009).

[186] *See, e.g.,* NASD Rule 2821, "Responsibilities Regarding Deferred Variable Annuities"; National Ass'n of Ins. Commissioners, "Suitability in Annuity Transactions Model Regulation," Model 275.

consumer is unfair. Enhanced reverse mortgage disclosures (proposed § 226.33(a)–(d)), new advertising rules (proposed § 226.33(e)), and a requirement that consumers receive counseling before taking out a reverse mortgage or incurring nonrefundable fees (proposed § 226.40(b)) provide protections for consumers that the Board believes should render a suitability assessment by the originator unnecessary. Other factors that the Board considered include those discussed below.

First, the Board is concerned that any suitability standard would reduce the availability and increase the cost of reverse mortgage credit for many consumers who could benefit from this product. A reverse mortgage suitability rule would be adopted under the Board's authority in TILA § 129(*l*)(2)(A) to deem certain practices in mortgage transactions unfair or deceptive, hence violations of the rule would give rise to a private right of action, potentially exposing creditors to significant litigation risk. 15 U.S.C. 1639(*l*)(2)(A); 15 U.S.C. 1640(a), (e). By contrast, SEC and most state suitability rules for annuities do not carry a private right of action. The Board also notes that the National Association of Insurance Commissioners' model suitability rule for annuities, adopted by many states, requires that an annuity provider have "reasonable grounds" for determining that an annuity is a suitable recommendation for a consumer; [187] the Board is concerned that the concept of "reasonableness" could be subject to substantial and possibly frivolous litigation when incorporated into a rule conveying a private right of action. In sum, the attendant risks of a suitability rule imposed under the Board's Section 129 authority may deter many reputable originators from offering reverse mortgages, especially to those who may be most in need of this type of credit.

Second, any suitability rule would require the creditor to collect significant information from the consumer about the consumer's financial status, tax status, and investment goals.[188] The amount and type of information required to make a suitability determination would be difficult to define clearly, because each consumer's situation is different. Yet a more flexible rule could expose creditors to excessive litigation risk—again, increasing the cost of reverse mortgage credit and reducing its availability. In addition, the challenge of producing substantial financial information may discourage many elders from pursuing a financial option that they may need. In effect, reverse mortgages may be rendered less accessible to the consumers for which they were designed, those with substantial home equity but few or no other assets. Finally, on a practical level, some consumers may simply find that navigating the reverse mortgage application process with these additional requirements is too difficult to undertake.

Third, as a result of market innovation, reverse mortgages may eventually be designed for borrowers under 62 years of age, and these products would presumably be subject to any suitability rule adopted under Regulation Z. The Board believes that arguments for suitability standards in reverse mortgage transactions may be weaker where the consumers are younger, as these borrowers are not a segment of the population generally distinguished in other Federal laws for special protections.[189]

Fourth, the Board's proposed counseling rule, discussed above, and enhanced disclosure rules, discussed in the section-by-section analysis to § 226.33(a) through (d), are designed to equip consumers to make their own informed decisions about whether a reverse mortgage is suitable for them. The proposed counseling rule, for instance, incorporates requirements for the timing and content of counseling, as well as provisions to ensure the independence of counselors, all of which are intended to ensure that consumers receive information about the appropriateness of a reverse mortgage from an independent counselor. See proposed § 226.40(b) and accompanying commentary. In the Board's view, reverse mortgage originators who comply with the proposed counseling requirements and enhanced disclosure rules should be able to presume that prospective borrowers have adequate information to make informed financial judgments for themselves.

The Board invites comment on its decision not to propose a suitability standard for reverse mortgages at this time, and solicits specific recommendations for an appropriate and workable standard.

Set Asides for Property Taxes and Insurance

Background

Both industry representatives and consumer advocates have expressed concerns about reverse mortgages becoming prematurely due if the borrower fails to pay required taxes, insurance, and assessments on the property securing the mortgage. The Board understands that some reverse mortgage borrowers may not make required payments because they are unaware of or forget to fulfill this obligation; others may simply not have the funds to do so. Borrowers that default on their reverse mortgage obligations in this way risk losing their homes.

Reverse mortgage borrowers may be at risk for not making these payments because they may be accustomed to traditional "forward" mortgages, in which property taxes and insurance are often escrowed and remitted by the loan servicer. In addition, as discussed in the section-by-section analysis to § 226.33(e), some reverse mortgage advertisements have stated that the borrower need not make any payments for a reverse mortgage. The initial impression given by these advertisements may lead consumers to overlook that they still must pay taxes and insurance on a regular basis.

When presented with this issue at their meeting on March 24, 2010, members of the Board's Consumer Advisory Council supported the Board's consideration of rules to protect reverse mortgage consumers who, for any number of reasons, fail to stay current on their tax and insurance payments. Consumer advocate members emphasized the benefits to consumers of requiring a set aside for taxes and insurance to ensure that funds are available to avoid default. Creditor and servicer members expressed concerns about the business implications of eventually having to foreclose on a senior homeowner, and therefore supported efforts to prevent consumers from defaulting in this way. Safety and soundness is another industry concern. For example, even if a HECM mortgagee covers these costs for a defaulting borrower, the loan is in technical default and cannot be assigned to FHA (FHA otherwise allows a HECM lender to assign a HECM to FHA if the loan amount reaches 98 percent of the maximum claim amount).[190] The mortgagee must then hold the loan even if it ultimately will not be able to collect from FHA the entire amount owed,

[187] National Ass'n of Ins. Commissioners, "Suitability in Annuity Transactions Model Regulation," Model 275.

[188] *See, e.g., id.* § 6(B).

[189] *See* Equal Credit Opportunity Act, 15 U.S.C. 1691(a) (implemented by the Board's Regulation B, 12 CFR Part 202).

[190] 24 CFR 206.107(a)(1).

because that amount would exceed the maximum claim amount.

HECM Rules on Set Asides and Escrow Accounts

In general, HECM borrowers are responsible for directly paying all "property charges" (consisting of taxes, ground rents, flood and hazard insurance premiums, and special assessments).[191] The borrower may elect, however, to have the mortgagee pay property charges by withholding funds from monthly payments due to the borrower or by charging the borrower's line of credit.[192]

Currently, FHA regulations permit a mortgagee to advance funds to cover property charges that a borrower fails to pay.[193] When the loan ends (such as when the borrower dies or moves out), the mortgagee can seek reimbursement from FHA for these advanced funds through the claims process.[194]

- Set asides. HECM rules require set asides in a few instances. First, if the borrower chooses to have the mortgagee pay property charges by withholding funds from monthly payments, the mortgagee must set aside a portion of the principal limit at the outset of the transaction to cover any initial property charges.[195] Set asides of the principal limit are also required to cover post-closing repairs, if needed, and for monthly servicing charges.[196]
- Escrow accounts. The HECM rules prohibit escrow accounts, which could be harmful to the borrower for two reasons. First, funds for escrow accounts are added to the loan balance even before the property charges to which they are allocated are due. Thus the borrower is forced to pay more interest and a higher monthly mortgage insurance premium (which is based on the loan amount) for a longer period of time than if the funds were added to the loan balance only when paid out to cover each tax and insurance payment. Second, escrow accounts are typically interest-bearing accounts that may have tax implications for the borrower.
- HUD property charges proposal. HUD has stated that it plans to propose a rule that would permit, under certain circumstances, a HECM mortgagee to set aside a portion of the borrower's principal limit (the maximum amount that a consumer may borrow) to cover property charges that the servicer would pay on the borrower's behalf.

The Board's Proposal

One way in which the Board is addressing concerns about consumer defaults for failure to pay property charges is through its proposed reverse mortgage disclosure and advertising rules. *See* proposed § 226.33(c) and (e) and accompanying commentary. In particular, as discussed above in the section-by-section analysis to proposed § 226.33(c)(4), the Board is proposing to require that open- and closed-end reverse mortgage TILA disclosures must notify the consumer that he or she will retain title to the home and must pay property taxes and insurance. *See* proposed § 226.33(c)(4)(iii). In addition, the Board is proposing an advertising rule that would highlight consumers' obligation to pay property taxes and insurance. *See* proposed § 226.33(e)(7).

Largely due to HUD's pending initiative on property charges, however, the Board is not at this time proposing regulations expressly addressing set asides for property charges in reverse mortgage transactions. The Board solicits comment on specific concerns and problems related to reverse mortgage borrower defaults due to failure to pay property charges. The Board also requests comment on and suggestions for alternatives to address these problems, particularly for proprietary reverse mortgages.

Section 226.41 Servicer's Response to Borrower's Request for Information

Background

After consummation or account-opening, a consumer may need to contact the current assignee of their loan for a number of reasons, including to request changes to or to assert their rights in connection with the mortgage or HELOC. For example, TILA Section 131(c) provides that a consumer may assert a right to rescind against an assignee of the obligation. 15 U.S.C. 1641(c). Consumers may also have a cause of action against an assignee, although generally assignees are only liable for TILA violations apparent on the face of the disclosure statement. TILA Section 131(e); 15 U.S.C. 1641(e). Consumers may also need to contact an assignee to seek forbearance or modification of loan terms.

Consumers may have difficulty determining the identity of an assignee. A consumer typically knows who the original creditor was, but may not know who the subsequent assignee of the loan is. If a loan is sold after consummation, the consumer's point of contact is usually a loan servicer who is under contract with the owner of the debt obligation or the owner's representative. Servicers are not assignees or owners for purposes of TILA Section 131's liability provisions. *See* TILA Section 131(f); 15 U.S.C. 1641(f).

TILA Section 131(f)(2) provides a means for consumers to identify and obtain contact information for the current owner or assignee of their loans. 15 U.S.C. 1641(f)(2). Specifically, upon receipt of a consumer's written request, the loan servicer must provide to the consumer, to the servicer's best knowledge, the name, address, and telephone number of the owner or master servicer of the obligation. Currently, Regulation Z does not provide any rules to implement TILA Section 131(f)(2).

Consumer advocates have expressed concerns that servicers often ignore information requests under TILA Section 131(f)(2). They point out that, if a servicer does not promptly and properly respond to a consumer's written request, the consumer could be prevented from asserting important legal rights. In one case, for example, a court found that a consumer's right of rescission was time-barred, after the servicer delayed responding to the consumer's written request for at least five months.[197] One reason servicers may ignore written requests is that TILA provides no deadline for the servicer's action. Moreover, until recently, TILA provided no private cause of action for failure to respond to a consumer's request under Section 131(f)(2).

To address these and related concerns, in 2009 Congress amended TILA in two ways. First, Congress added TILA Section 131(g) to require a new owner or assignee of a debt obligation to provide written notice to the consumer of the transfer no later than 30 days after the transfer.[198] 15 U.S.C. 1641(g). Among other information, the notice must include the identity, address, and telephone number of the new owner or assignee of the note and information on how to reach an agent or party having authority to act on behalf of the new owner or assignee. Second, Congress amended TILA Section 130(a) to give consumers a private right of action for violations of TILA Sections 131(f) and 131(g).[199] 15 U.S.C. 1640(a), 1641(f) and (g).

In November 2009, the Board published new § 226.39 as an interim final rule to implement TILA Section 131(g). 74 FR 60143, Nov. 20, 2009. In comments on § 226.39, consumer

[191] 24 CFR 206.205(a).

[192] 24 CFR 206.205(b).

[193] 24 CFR 206.205(c).

[194] 24 CFR 206.123, 206.129.

[195] 24 CFR 206.19(d)(3), 206.205(f).

[196] 24 CFR 206.19(d)(2), (4).

[197] *See Meyer* v. *Argent Mortgage Co.,* 379 B.R. 529 (Bankr. E.D. Pa. 2007).

[198] Helping Families Save Their Homes Act of 2009, Public Law 111–22, tit. IV, § 404(a), 123 Stat. 1632, 1638 (2009).

[199] *Id.* at § 404(b).

advocates argued that regulations implementing TILA Section 131(f)(2) are necessary, even though TILA Section 131(g) and § 226.39 require assignees to identify themselves to consumers. Consumer advocates note that a consumer may still need to use TILA Section 131(f)(2) to request information regarding the current owner if, for example, transfer of the obligation occurred before the effective date of TILA Section 131(g), the consumer misplaced or never received the TILA Section 131(g) notice from the new owner, or if the consumer wishes to exercise the right to rescind or otherwise contact the new owner before receiving the notice under TILA Section 131(g). In addition, § 226.39 does not require notice to the consumer if a transferee assigns the obligation within 30 days of acquisition. Although RESPA provides consumers with the right to obtain information from a servicer by making a "qualified written request,"[200] such a request would not be helpful in time-sensitive situations, because the servicer has 60 days to provide the requested information.[201]

The Board's Proposal

To address these concerns, the Board proposes new § 226.41 to implement TILA Section 131(f)(2). 15 U.S.C. 1641(f)(2). Under the proposal, upon receipt of a written request from the consumer, the servicer would be required to provide the consumer, within a reasonable time and to the best of its knowledge, the name, address, and telephone number of the owner or the master servicer of the debt obligation. The term "servicer" as used in the proposal has the same meaning as in § 226.36(c)(3). Proposed comment 41–1 clarifies that it would be reasonable under most circumstances to provide the required information within ten business days of receipt of the consumer's written request.

Proposed § 226.41 is intended to ensure that information critical for the consumer's exercise of legal rights against the current owner or assignee is provided within a reasonable time. The Board does not expect that the rule would impose a significant burden on servicers, because they should already possess or may easily obtain the requested information. The Board requests comment on the appropriateness of the ten business day safe harbor in proposed comment 41–1, as well as any benefits or burdens that the proposed rule may create.

[200] 12 U.S.C. 2600 *et seq.*(implemented by Regulation X, 12 CFR Part 3500).

[201] 12 U.S.C. 2605(e)(2); 24 CFR 3500.21(e).

Appendices G and H—Open-End and Closed-End Model Forms and Clauses

Appendices G and H set forth model forms, model clauses and sample forms that creditors may use to comply with the requirements of Regulation Z. Appendix G contains model forms, model clauses and sample forms applicable to open-end plans. Appendix H contains model forms, model clauses and sample forms applicable to closed-end loans. Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. As discussed above, the Board proposes to revise or add several model and sample forms to Appendices G and H for the requirements applicable to rescission and credit insurance, debt cancellation coverage, and debt suspension coverage ("credit protection products"). The revised or new model or sample forms are discussed above in the section-by-section analysis applicable to the regulatory provisions to which the forms relate. *See* discussion under §§ 226.4(d) (credit protection products), 226.15(b) (rescission of a HELOC), and 226.23(b) (rescission of a closed-end mortgage).

Permissible Changes

The staff commentary to Appendices G and H contain comment app. G and H–1, which discusses changes creditors may make to the model forms and clauses. Comment app. G and H–1 also lists the models to which formatting changes may not be made because the disclosures must be made in a form substantially similar to that in the models to retain the safe harbor from liability. In the August 2009 HELOC Proposal and the August 2009 Closed-End Proposal, the Board proposed to revise comment app. G and H–1 by adding a number of proposed new open-end and closed-end model forms and clauses to the list of model forms and clauses to which formatting changes may not be made. In addition, in the August 2009 Closed-End Proposal, the Board proposed to require creditors to provide disclosures for transactions secured by real property or a dwelling only as applicable. *See* proposed § 226.38. As a result, the Board proposed to amend comment app. G and H–1.vi to clarify that the use of multipurpose standard forms is not permitted for transactions secured by real property or a dwelling. *See* discussion under proposed § 226.37(a)(2) in the August 2009 Closed-End Proposal. In addition, current comment app. G and H–1.vii provides that acceptable changes to model forms includes using a vertical, rather than a horizontal, format for the boxes in the closed-end disclosures. Consistent with the proposed restrictions on format changes to the proposed closed-end model forms, the Board proposed in the August 2009 Closed-End Proposal to delete comment app. G and H–1.vii as obsolete.

In this proposal, the Board proposes to revise comment app. G and H–1 further by adding proposed Forms G–5(A)–(C) (for rescission in connection with a HELOC) to the list of forms to which formatting changes may not be made. As discussed in more detail in the section-by-section analysis to proposed § 226.15(b), proposed § 226.15(b)(6) provides that a creditor satisfies § 226.15(b)(3) if it provides Model Form G–5(A), or a substantially similar notice, which is properly completed with the disclosures required by § 226.15(b)(3). In addition, proposed Samples G–5(B) and G–5(C) provide sample forms for how a creditor may satisfy the content and format requirements set forth in § 226.15(b) and Model Form G–5(A) for certain rescission notices.

For similar reasons, the Board also proposes to revise comment app. G and H–1 by adding proposed Model Forms H–8(A) and H–9 and Sample H–8(B) (for rescission in connection with a closed-end mortgage) to the list of forms to which formatting changes may not be made. As discussed in more detail in the section-by-section analysis to proposed § 226.23(b), proposed § 226.23(b)(6) provides that a creditor satisfies § 226.23(b)(3) if it provides the appropriate model form (H–8(A) or H–9), or a substantially similar notice, which is properly completed with the disclosures required by § 226.23(b)(3). Proposed Sample H–8(B) provides a sample form for how a creditor may satisfy the content and format requirements set forth in § 226.23(b) and Model Form H–8(A).

Finally, the Board proposes to revise comment app. G and H–1 by adding proposed Model Forms G–16(A) and H–17(A), and Sample Forms G–16(B)–(D) and H–17(B)–(D) (for credit protection products) to the list of forms to which formatting changes may not be made. As discussed in more detail in the section-by-section analysis to proposed § 226.4(d), proposed § 226.4(d) provides that a creditor satisfies § 226.4(d) if it provides the required disclosures grouped together and substantially similar in headings, content, and format to Model Forms G–16(A) or H–17(A). Proposed Samples G–16(B)–(D) and H–17(B)–(D) provide examples of how a creditor may satisfy the content and format requirements set forth in § 226.4(d) and Model Forms G–16(A) or H–17(A).

Appendix G—Open-End Model Forms and Clauses

Appendix G to part 226 sets forth model forms, model clauses and sample forms that creditors may use to comply with requirements of Regulation Z for open-end credit. Although use of the model forms and clauses generally is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures.

Credit Protection Products

As noted above, the Board proposes a new model form and three new sample forms for the requirements applicable to credit protection products under § 226.4(d). Accordingly, the Board proposes to delete the current G–16(A) Debt Suspension Model Clause and G–16(B) Debt Suspension Sample, and add G–16(A) Credit Insurance, Debt Cancellation Coverage, or Debt Suspension Coverage Model Form; G–16(B) Credit Life Insurance Sample; G–16(C) Disability Debt Cancellation Coverage Sample; and G–16(D) Unemployment Debt Suspension Coverage Sample to illustrate the disclosures required under proposed § 226.4(d)(1) and (d)(3).

Model and Sample Forms Applicable to the Right of Rescission Notice

In this proposal, the Board would require new disclosures in proposed § 226.15(b) for open-end consumer credit transactions subject to the right of rescission. As discussed in the section-by-section analysis to proposed § 226.15(b) and as discussed in detail below, the Board proposes to replace the current model forms for the rescission notices in Model Forms G–5 through G–9 with proposed Model Form G–5(A), and two proposed Sample Forms G–5(B) and G–5(C). Currently, Appendix G provides the following five model rescission notices, one that corresponds to each of the five transactions that might give right to a right of rescission: (1) Form G–5 for account opening; (2) Form G–6 for each advance that is greater than the previously-established credit limit; (3) Form G–7 for increases in the credit limit; (4) Form G–8 for addition of a security interest; and (5) Form G–9 for increases in a security interest when there is not a credit limit increase.

As discussed in the section-by-section analysis to proposed § 226.15(b), the Board proposes to require new disclosures for the notice of the right to rescind for HELOC accounts. Consistent with the proposed content and format requirements for the rescission notices in proposed § 226.15(b), the Board proposes to replace current Model Forms G–5 through G–9 with proposed Model Form G–5(A), and two proposed Samples G–5(B) and G–5(C). The Board also proposes to revise comment app. G–4 consistent with the new model and sample forms. Under the proposal, most of the guidance in current comment app. G–4 regarding existing Model Forms G–5 through G–9 would be deleted. Guidance regarding the parenthetical information following the blank for the deadline for rescission would be deleted as unnecessary. The cross reference to § 226.2(a)(25) regarding the specificity with which the security interest should be disclosed in current Model Form G–7 is no longer necessary.

The Board proposes to replace the material removed from comment app. G–4 with guidance regarding the content and format requirements in proposed § 226.15(b)(2) and corresponding proposed comments. Specifically, proposed comment app. G–4.i provides that a creditor satisfies § 226.15(b)(3) if it provides the Model Form G–5(A), or a substantially similar notice, which is properly completed with the disclosures required by § 226.15(b)(3).

Sample G–5(B) provides guidance where a creditor is providing the rescission notice for opening of a HELOC account where the credit line is being secured by the consumer's home and the full credit line is rescindable. Proposed comment app. G–4.ii clarifies that in this situation, a creditor may use Sample G–5(B) to meet the content and format requirements for the rescission notice set forth in § 226.15(b) and Model Forms G–5(A).

Sample G–5(C) provides guidance where a creditor is providing the rescission notice for a credit limit increase on the HELOC account. Proposed comment app. G–4.iii clarifies that in this situation, a creditor may use proposed Sample G–5(C) to meet the content and format requirements for the rescission notice set forth in § 226.15(b) and Model Form G–5(A).

Proposed comment app. G–4.iv notes that Samples G–5(B) and G–5(C) contain the following optional disclosures set forth in § 226.15(b): (1) A disclosure about joint owners; (2) an acknowledgment of receipt of the notice; (3) the consumer's name and property address pre-printed on the form; (4) an account number on the form; and (5) a fax number that may be used by the consumer to exercise his or her rescission right. This proposed comment clarifies that a creditor may delete these optional disclosures from Samples G–5(B) and G–5(C) and still retain the safe harbor from liability by using these forms.

Proposed comment app. G–4.v provides that although creditors are not required to use a certain paper size in disclosing the rescission notice required under § 226.15(b), Samples G–5(B) and G–5(C) are each designed to be printed on an 8½ x 11 inch sheet of paper. In addition, proposed comment app. G–4.v specifies that the following formatting techniques were used in presenting the information in the sample notices to ensure that the information is readable:

A. A readable font style and font size (10-point Arial font style).

B. Sufficient spacing between lines of the text.

C. Adequate spacing between paragraphs when several pieces of information were included in the same row of the table, as appropriate.

D. Standard spacing between words and characters. In other words, the text was not compressed to appear smaller than 10-point type.

E. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text.

F. Sufficient contrast between the text and the background. Generally, black text was used on white paper.

Proposed comment app. G–4.vi specifies that while the regulation does not require creditors to use the above formatting techniques in presenting information in the rescission notice (except for the 10-point font requirement), creditors are encouraged to consider these techniques when deciding how to disclose information in the notice, to ensure that the information is presented in a readable format.

Proposed comment app. G–4.vi clarifies that creditors may use color, shading and similar graphic techniques with respect to the rescission notices, so long as the notice remains substantially similar to the model and sample forms in G–5(A)–(C).

The Board is not proposing to provide sample forms for each transaction that might give rise to a right to rescind for HELOC accounts. For example, the Board is not proposing to provide samples forms for the following situations where a right to rescind arises under § 226.15: (1) Each advance that falls outside of a previously-established credit limit; (2) an addition of a security interest; and (3) an increase in the security interest when there is not a credit limit increase. Based on Board research, the Board understands that these situations rarely occur. The Board believes that sample forms for these transactions would not necessarily be helpful to creditors. Because these events are rare, when they do occur, creditors may need to craft a specialized notice to deal with facts that pertain to that particular transaction. Nonetheless, the Board solicits comment on whether the Board should issue sample forms for these transactions, and if so, in what context they generally arise.

Appendix H—Closed-End Model Forms and Clauses

Appendix H to part 226 sets forth model forms, model clauses and sample forms that creditors may use to comply with requirements of Regulation Z for closed-end credit. Although use of the model forms and clauses generally is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures.

Credit Protection Products

As noted above, the Board proposes a new model form and three new sample forms for the requirements applicable to credit protection products under § 226.4(d). Accordingly, the Board proposes to delete the current H–17(A) Debt Suspension Model Clause and H–17(B) Debt Suspension Sample, and add H–17(A) Credit Insurance, Debt Cancellation Coverage, or Debt Suspension Coverage Model Form; H–17(B) Credit Life Insurance Sample; H–17(C) Disability Debt Cancellation Coverage Sample; and H–17(D) Unemployment Debt Suspension Coverage Sample to illustrate the disclosures required under proposed § 226.4(d). In a technical revision, the Board also proposes to revise comments app. H–1, H–3 and H–12 to clarify that the guidance applies to new Model Form H–17(A) and Samples H–17(B), (C) and (D).

Model Forms and Sample Form for Notice of the Right of Rescission

In this proposal, the Board would require new disclosures in proposed § 226.23(b) for closed-end consumer credit transactions subject to the right of rescission. Current Model Form H–9 illustrates the format and content of disclosures currently required under § 226.23(b) for a refinancing with the original creditor involving the extension of new money. Current Model Form H–8 illustrates the format and content of disclosures currently required under § 226.23(b) for all other closed-end consumer credit transactions subject to the right of rescission. As discussed in the section-by-section analysis to proposed § 226.23(b) and as discussed in detail below, the Board proposes to revise the current model forms for the rescission notices in Model Forms H–8 (redesignated as H–8(A)) and H–9 (renamed as "Rescission Model Form (New Advance of Money with the Same Creditor)", and to add Sample H–8(B).

The Board proposes to revise existing commentary that provides guidance to creditors on how to use current Model Forms H–8 and H–9. Under the proposal, most of the guidance contained in current comment app. H–11 regarding current Model Forms H–8 and H–9 would be deleted. Guidance regarding the parenthetical information following the blank for the deadline for rescission would be deleted as unnecessary. The cross reference to § 226.2(a)(25) regarding the specificity with which the security interest should be disclosed in current Model Form H–9 is no longer necessary, nor is the guidance regarding the use of the current model forms over the previous forms.

The Board proposes to replace the material removed from comment app. H–11 with guidance regarding the content and format requirements introduced by proposed § 226.23(b)(2) and the corresponding proposed comments. Specifically, proposed comment app. H–11 clarifies that Model Forms H–8(A) and H–9 contain the rescission notices for a typical closed-end transaction and a new advance of money with the same creditor, respectively. These proposed model forms illustrate, in the tabular format, the disclosures required generally by proposed § 226.23(b). Proposed comment app. H–11.ii specifies that a creditor satisfies § 226.23(b)(3) if it provides the appropriate model form (H–8(A) or H–9), or a substantially similar notice, which is properly completed with the disclosures required by § 226.23(b)(3).

Proposed comment app. H–11.iii notes that Sample H–8(B) contains the following optional disclosures set forth in § 226.23(b): (1) a disclosure about joint owners; (2) an acknowledgment of receipt of the notice; (3) the consumer's name and property address pre-printed on the form; and (4) the loan number on the form; and (5) a fax number that may be used by the consumer to exercise his or her rescission right. This proposed comment clarifies that a creditor may delete these optional disclosures from Sample H–8(B) and still retain the safe harbor from liability by using this form.

Proposed comment app. H–11.iv provides that although creditors are not required to use a certain paper size in disclosing the rescission notice required under § 226.23(b), proposed Model Forms H–8(A) and H–9 and Sample H–8(B) are designed to be printed on an 8½ x 11 inch sheet of paper. In addition, proposed comment app. H–11.iv states that the following formatting techniques were used in presenting the information in the model and sample notices to ensure that the information was readable:

A. A readable font style and font size (10-point Arial font style).

B. Sufficient spacing between lines of the text.

C. Adequate spacing between paragraphs when several pieces of information were included in the same row of the table, as appropriate.

D. Standard spacing between words and characters. That is, words were not compressed to appear smaller than 10-point type.

E. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text.

F. Sufficient contrast between the text and the background. Black text was used on white paper.

Proposed comment app. H–11.v states that while the regulation does not require creditors to use the above formatting techniques in presenting information in the table (except for the 10-point font size), creditors are encouraged to consider these techniques when deciding how to disclose the notice, to ensure that the information is presented in a readable format.

Proposed comment app. H–11.vi clarifies that creditors may use color, shading and similar graphic techniques with respect to the rescission notices, so long as the notice remains substantially similar to the model and sample forms in Appendix H.

Appendix K—Model and Sample Reverse Mortgage Forms

Current Appendix K to Regulation Z provides instructions on how to calculate the TALC rates required to be disclosed, based on the calculation method used for closed-end APRs in Appendix J, and provides a model and sample disclosure form. Because the Board is proposing to remove the disclosure of the TALC rate table, Appendix K would be revised to contain only the model and sample disclosure forms that creditors may use to comply with the requirements of Regulation Z for reverse mortgages. Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures.

As discussed in the section-by-section analysis to proposed § 226.33(c) and (d), the Board proposes to add new model and sample forms for open-end reverse mortgage early disclosures, open-end reverse mortgage account-opening disclosures, and closed-end reverse mortgage disclosures. Accordingly, the Board proposes to add new Model Forms, Sample Forms, and Model Clause K–1 through K–7 that creditors may use to comply with the requirements in proposed § 226.38(c) and (d).

The Board proposes to add Models K–1 through K–3 to illustrate the format and content of disclosures required under proposed § 226.33 for early open-end reverse mortgage disclosures, account-opening reverse mortgage disclosures, and closed-end reverse mortgage disclosures, respectively. In addition, the Board would add Model Clause K–7 to provide guidance to creditors on how to disclose a shared equity or shared appreciation feature.

In addition, the Board proposes to add several sample forms to provide examples of how creditors can provide certain disclosures required under proposed § 226.33 in the tabular format for each of the types of reverse mortgage disclosures. Specifically, proposed Samples K–4 through K–6 illustrate disclosures required under proposed § 226.33 for early open-end reverse mortgage disclosures, account-opening reverse mortgage disclosures, and closed-end reverse mortgage disclosures, respectively.

The Board also proposes to add commentary to provide guidance to creditors on the purpose of the sample forms, and how to use Model Forms, Sample Forms and Model Clause K–1 through K–7 for reverse mortgages. Comment app. K–1 and app. K–2 discuss permissible changes that creditors may make to the model forms and clauses without losing protection from liability for failure to comply with the regulation's disclosure requirements. For example, the commentary indicates that Samples K–4 through K–6 are designed to be printed on 8½ x 11 inch sheets of paper. In addition, the following formatting techniques were used in presenting the information in the table to ensure that the information was readable:

1. A readable font style and font size (10-point Ariel font style, except for the APR which is shown in 16-point type).
2. Sufficient spacing between lines of the text.
3. Standard spacing between words and characters. That is, words were not compressed to appear smaller than 10-point type.
4. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text.
5. Sufficient contrast between the text and the background. Black text was used on white paper.

Although the Board is not requiring creditors to use the above formatting techniques in presenting information in the table (except for the 10-point and 16-point font size), the Board encourages creditors to consider these techniques when disclosing information in the tabular format to ensure that the information is presented in a readable format. However, comment app. K–2 clarifies that, except as otherwise permitted, disclosures must be substantially similar in sequence and format to model forms K–1 through K–3, as applicable.

Comment app. K–3 provides guidance to creditors regarding the purpose of sample forms generally. In addition, the Board proposes to add comments to indicate the terms illustrated in the sample forms. Comment app. K–4 would indicate the terms of the early open-end reverse mortgage disclosure illustrated in Sample K–4. Comment app. K–5 would indicate the terms of the account-opening open-end reverse mortgage disclosure illustrated in Sample K–5. Comment app. K–6 would indicate the terms of the closed-end reverse mortgage disclosure illustrated in Sample K–6.

Appendix L—Reserved

Appendix L to Regulation Z contains the loan periods creditors must use in disclosing the TALC rates and a table of life expectancies that must be used to determine loan periods based on the consumer's life expectancy. The proposal would remove and reserve Appendix L because the Board is proposing to eliminate the table of TALC rates. The Board requests comment on whether the life expectancies (updated to current figures) in Appendix L would be useful in determining the total of payments, annual percentage rate, and finance charge under proposed § 226.33(c)(14).

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this proposed rule is found in 12 CFR part 226. The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0199.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq.*). Since the Board does not collect any information, no issue of confidentiality arises. The respondents/recordkeepers are creditors and other entities subject to Regulation Z.

TILA and Regulation Z are intended to ensure effective disclosure of the costs and terms of credit to consumers. For open-end credit, creditors are required to, among other things, disclose information about the initial costs and terms and to provide periodic statements of account activity, notice of changes in terms, and statements of rights concerning billing error procedures. Regulation Z requires specific types of disclosures for credit and charge card accounts and home equity plans. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required in connection with certain products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising. Creditors are required to retain evidence of compliance for twenty-four months, § 226.25, but Regulation Z identifies only a few specific types of records that must be retained.[202]

Under the PRA, the Board accounts for the paperwork burden associated with Regulation Z for the state member banks and other creditors supervised by the Federal Reserve that engage in consumer credit activities covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the Federal Reserve-regulated institutions as: State member banks, branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other Federal agencies account for the paperwork burden imposed on the entities for which they have administrative enforcement authority. The current total annual burden to

[202] *See* comments 25(a)–3 and –4.

comply with the provisions of Regulation Z is estimated to be 1,497,362 hours for the 1,138 Federal Reserve-regulated institutions that are deemed to be respondents for the purposes of the PRA. To ease the burden and cost of complying with Regulation Z (particularly for small entities), the Board provides model forms, which are appended to the regulation.

As discussed in the preamble, the Board proposes changes to format, timing, and content requirements for the following notices and disclosures governed by Regulation Z: (1) Right of rescission—notice of right to rescind certain open- and closed-end loans secured by the consumer's principal dwelling; (2) subsequent disclosure requirements—loan modifications that require new TILA disclosures; (3) advertisements for open-end home-secured credit plans; (4) requirements for reverse mortgages; and (5) notices given by loan servicers containing information about the current owner or master servicer of a consumer's loan.[203]

The proposed rule would impose a one-time increase in the total annual burden under Regulation Z for all respondents regulated by the Federal Reserve by 190,168 hours, from 1,497,362 to 1,687,530 hours. In addition, the Board estimates that, on a continuing basis, the proposed revisions to the rules would increase the total annual burden by 610,464 hours from 1,497,362 to 2,107,826 hours.

The total estimated burden increase, as well as the estimates of the burden increase associated with each major section of the proposed rule as set forth below, represents averages for all respondents regulated by the Federal Reserve. The Board expects that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size and complexity of the respondent.[204]

The Board proposes to revise the content and format requirements for the notice of the right to rescind under sections 226.15 and 226.23. In an effort to reduce burden the Board is amending Appendix G, as it pertains to section 226.15, and Appendix H, as it pertains to section 226.23, to replace the current model forms for the rescission notices. The Board estimates that 1,138 respondents regulated by the Federal Reserve would take, on average, 160 hours (four business weeks) to update their systems, internal procedure manuals, and provide training for relevant staff to comply with the proposed notice and disclosure requirements in sections 226.15 and 226.23. This one-time revision would increase the burden by 182,080 hours.

The Board proposes to revise section 226.16 to address certain misleading or deceptive practices used in open-end home-secured credit plan advertisements and promote consistency in the current advertising rules applicable to open-end and closed-end home-secured credit. The Board estimates that the 651 respondents regulated by the Federal Reserve would take, on average, 8 hours (one business day) to update their systems for advertising to comply with the proposed disclosure requirements in section 226.16. This one-time revision would increase the burden by 5,208 hours.

The Board proposes to revise section 226.20(a) for closed-end mortgages requiring new disclosures for mortgage transactions when existing parties agree to modify certain key terms, such as the interest rate or loan amount, and to remove reliance on whether the existing legal obligation is satisfied and replaced under applicable State law. The Board estimates that the 1,138 respondents regulated by the Federal Reserve would take, on average, 40 hours a month to comply with the proposed disclosure requirements in section 226.20(a). This revision would increase the burden by 546,240 hours.

The Board proposes to revise section 226.33 to ensure consumers receive meaningful information in an understandable format using forms that are designed, and have been consumer tested, for reverse mortgage consumers. The Board is proposing three consolidated reverse mortgage disclosure forms: An early disclosure for open-end reverse mortgages, an account-opening disclosure for open-end reverse mortgages, and a closed-end reverse mortgage disclosure. Rather than receive two or more disclosures under TILA that come at different times and have different formats, consumers would receive all the disclosures in a single format that is largely similar regardless of whether the reverse mortgage is structured as open-end or closed-end. The Board's proposal would also facilitate compliance with TILA by providing creditors with a single set of forms that are specific to and designed for reverse mortgages, rather than requiring creditors to modify and adapt disclosures designed for forward mortgages. In an effort to reduce burden Appendix K would be amended by removing the disclosure of the TALC rate table and adding model and sample disclosure forms that creditors may use to comply with the requirements of Regulation Z for reverse mortgages. The Board estimates that 18 respondents regulated by the Federal Reserve would take, on average, 160 hours (four business weeks) to update their systems, internal procedure manuals, and provide training for relevant staff to comply with the proposed notice and disclosure requirements in sections 226.33. This one-time revision would increase the burden by 2,080 hours. On a continuing basis the Board estimates that 18 respondents regulated by the Federal Reserve would take, on average, 8 hours a month to comply with the proposed notice and disclosure requirements in sections 226.33 and would increase the ongoing burden by 1,728 hours.

Board proposes new § 226.41 to implement TILA Section 131(f)(2). 15 U.S.C. 1641(f)(2). Under the proposal, upon receipt of a written request from the consumer, the servicer would be required to provide the consumer, within a reasonable time and to the best of its knowledge, the name, address, and telephone number of the owner or the master servicer of the debt obligation. The Board estimates that 651 respondents regulated by the Federal Reserve would take, on average, 8 hours a month to comply with the proposed notice and disclosure requirements in section 226.41 and would increase the ongoing burden by 62,496 hours.

The other Federal financial agencies: Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA) are responsible for estimating and reporting to OMB the total paperwork burden for the domestically chartered commercial banks, thrifts, and Federal credit unions and U.S. branches and agencies of foreign banks for which they have primary administrative enforcement jurisdiction under TILA Section 108(a), 15. U.S.C. 1607(a). These agencies are permitted, but are not required, to use the Board's burden estimation methodology. Using the Board's method, the total current

[203] This proposal also contains changes to format and content requirements for disclosures related to credit insurance or debt cancellation or debt suspension coverage ("credit protection products"). These proposed changes amend provisions that were originally proposed as part of an earlier Board proposal on closed-end mortgages (Docket No. R–1366) (74 FR 43232). The burden estimate for changes to disclosures for credit protection products are not included in burden estimates for this rulemaking because they were included in the burden estimate for the earlier closed-end mortgage proposal.

[204] The burden estimate for this rulemaking does not include the burden addressing changes to implement the following provisions announced in separate rulemakings:

- Closed-End Mortgages (Docket No. R–1366) (74 FR 43232), or
- Home-Equity Lines of Credit (Docket No. R–1367) (74 FR 43428).

estimated annual burden for the approximately 16,200 domestically chartered commercial banks, thrifts, and Federal credit unions and U.S. branches and agencies of foreign banks supervised by the Federal Reserve, OCC, OTS, FDIC, and NCUA under TILA would be approximately 19,610,245 hours. The proposed rule would impose a one-time increase in the estimated annual burden for such institutions by 5,313,600 hours to 24,923,845 hours. On a continuing basis the proposed rule would impose an increase in the estimated annual burden by 3,110,400 to 22,720,645 hours. The above estimates represent an average across all respondents; the Board expects variations between institutions based on their size, complexity, and practices.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Board's functions; including whether the information has practical utility; (2) the accuracy of the Board's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Michelle Shore, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 95–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

VIII. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, the Board is publishing an initial regulatory flexibility analysis for the proposed amendments to Regulation Z. The RFA requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Under regulations issued by the Small Business Administration (SBA), an entity is considered "small" if it has $175 million or less in assets for banks and other depository institutions, and $7 million or less in revenues for non-bank mortgage lenders and loan servicers.[205]

Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period. The Board requests public comment in the following areas.

A. Reasons for the Proposed Rule

Congress enacted TILA based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. One of the stated purposes of TILA is providing a meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and avoid the uninformed use of credit. TILA's disclosures differ depending on whether credit is an open-end (revolving) plan or a closed-end (installment) loan. TILA also contains procedural and substantive protections for consumers. TILA is implemented by the Board's Regulation Z.

In this regard, the proposed amendments to Regulation Z partly aim to improve the effectiveness of the disclosures that creditors provide to consumers. Accordingly, the Board is proposing changes to format, timing and content requirements for disclosures related to rescission rights, and to credit insurance or debt cancellation or debt suspension coverage ("credit protection products"). The proposal revises the rules regarding when a modification to an existing closed-end mortgage loan results in a new transaction, to ensure that consumers receive TILA disclosures for modifications to key loan terms. The Board also is proposing to provide consumers with a right to a refund of fees for three days after the consumer receives early disclosures required under § 226.19(a). The proposal includes changes to format, timing, and content requirements for reverse mortgage disclosures, and rules to govern reverse mortgage and open-end mortgage advertising. The proposal also would require loan servicers, upon request, to provide a consumer with information about the owner or master servicer of the consumer's loan within a reasonable time after the request, such as 10 business days.

Congress enacted HOEPA in 1994 as an amendment to TILA. TILA is implemented by the Board's Regulation Z. HOEPA imposed additional substantive protections on certain high-cost mortgage transactions. HOEPA also charged the Board with prohibiting acts or practices in connection with mortgage loans that are unfair, deceptive, or designed to evade the purposes of HOEPA, and acts or practices in connection with refinancing of mortgage loans that are associated with abusive lending or are otherwise not in the interest of borrowers.

The proposed regulations would revise and enhance disclosure requirements of Regulation Z for transactions secured by a consumer's principal dwelling, as noted above. These amendments are proposed in furtherance of the Board's responsibility to prescribe regulations to carry out the purposes of TILA, including promoting consumers' awareness of the cost of credit and their informed use thereof. The proposal also would revise the rules for determining whether a closed-end mortgage is a higher-priced mortgage loan subject to special consumer protections, to ensure that prime loans are not incorrectly classified as higher-priced loans. Finally, the Board is proposing rules to mandate reverse mortgage counseling and prohibit reverse mortgage cross-selling. These restrictions are proposed pursuant to the Board's statutory responsibility to prohibit unfair and deceptive acts and practices in connection with mortgage loans.

B. Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** contains the statement of objectives and legal basis. In summary, the proposed amendments to Regulation Z are designed to: (1) Revise the rules regarding the consumer's right to rescind certain open- and closed-end loans secured by the consumer's principal dwelling in §§ 226.15 and 226.23; (2) revise the rules regarding when a modification of an existing closed-end loan requires new disclosures in § 226.20(a); (3) revise the rules regarding when a closed-end loan is a "higher-priced" mortgage subject to special consumer protections in § 226.35; (4) provide consumers with the right to a refund of fees for three days after the consumer receives the early disclosures required under § 226.19(a); (5) for reverse mortgages, revise the cost disclosures, prohibit certain unfair lending acts or practices,

[205] 13 CFR 121.201; *see also* SBA, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, *available at http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

and ensure that advertising is balanced and accurate in §§ 226.33 and 226.40; (6) revise the rules regarding disclosure requirements for credit protection products written in connection with a credit transaction in § 226.4(d); (7) revise the rules regarding advertisements for HELOC plans in § 226.16(d); and (8) add new § 226.41 to require loan servicers, upon request, to provide information to a consumer about the owner or master servicer of the consumer's loan within a reasonable time after the request, such as 10 business days.

The legal basis for the proposed rule is in Sections 105(a), 105(f), 129(*l*)(2), 131(f)(2) and 147 of TILA. 15 U.S.C. 1604(a), 1604(f), 1639(*l*)(2), 1641(f)(2) and 1665b. A more detailed discussion of the Board's rulemaking authority is set forth in part IV of the **SUPPLEMENTARY INFORMATION**.

C. Description of Small Entities to Which the Proposed Rule Would Apply

The proposed regulations would apply to all institutions and entities that engage in originating or extending home-secured credit, as well as servicers of these loans. The Board is not aware of a reliable source for the total number of small entities likely to be affected by the proposal, and the credit provisions of TILA and Regulation Z have broad applicability to individuals and businesses that originate, extend, and service even small numbers of home-secured credit. *See* § 226.1(c)(1).[206] All small entities that originate, extend, or service open-end loans secured by a consumer's principal dwelling or closed-end loans secured by a real property or a dwelling; or offer credit protection products in connection with any credit transaction covered by Regulation Z potentially could be subject to at least some aspects of the proposed rules.

The Board can, however, identify through data from Reports of Condition and Income ("call reports") approximate numbers of small depository institutions that would be subject to the proposed rules. Based on March 2010 call report data, approximately 8,845 small institutions would be subject to the proposed rules. Approximately 15,658 depository institutions in the United States filed call report data, approximately 11,148 of which had total domestic assets of $175 million or less and thus were considered small entities for purposes of the RFA. Of 3,898 banks, 523 thrifts and 6,727 credit unions that filed call report data and were considered small entities, 3,776 banks, 496 thrifts, and 4,573 credit unions, totaling 8,845 institutions, extended mortgage credit. For purposes of this analysis, thrifts include savings banks, savings and loan entities, co-operative banks, and industrial banks.

The Board cannot identify with certainty the number of small non-depository institutions that would be subject to the proposed rules. Home Mortgage Disclosure Act (HMDA)[207] data indicate that 1,507 non-depository institutions filed HMDA reports in 2008.[208] Based on the small volume of lending activity reported by these institutions, most are likely to be small.

Certain parts of the proposed rule would also apply to mortgage servicers. The Board is not aware, however, of a source of data for the number of small mortgage servicers. The available data are not sufficient for the Board realistically to estimate the number of mortgage servicers that would be subject to the proposed rules, and that are small as defined by SBA.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The compliance requirements of the proposed rules are described in part VI of the **SUPPLEMENTARY INFORMATION**. The effect of the proposed revisions to Regulation Z on small entities is unknown. Some small entities would be required, among other things, to modify their notices of the right to rescind and the processes for delivery thereof to comply with the revised rules. The precise costs to small entities of updating their systems and disclosures are difficult to predict. These costs will depend on a number of unknown factors, including, among other things, the specifications of the current systems used by such entities to prepare and provide disclosures and to administer and maintain accounts, the complexity of the terms of credit products that they offer, and the range of such product offerings.

Small entities would be required to provide only one copy of the notice of the right to rescind to consumers at closing, thus enjoying a cost savings. The proposed rules would also clarify the parties' obligations when the right to rescind is asserted after the initial three days, and clarify that the consumer's death and certain refinancings terminate an extended right to rescind, thus reducing litigation risks and costs for small entities. The proposed rules would revise the list of "material disclosures" that can trigger the extended right to rescind to focus on disclosures that testing shows are most important to consumers, and establish accuracy tolerances for certain disclosures, accordingly lowering costs for small entities.

Under the proposed rules, a new transaction for purposes of TILA occurs when the creditor and consumer modify certain key terms, regardless of State law or the parties' intent. The proposed rules would thus increase the number of transactions that require new disclosures and potential compliance with HOEPA rules, raising costs for small entities. The precise costs to small entities of providing more disclosures are difficult to predict. These costs would be mitigated somewhat by the proposed exemption of loan workouts reached in a court proceeding, loan workouts for borrowers in delinquency or default, and certain beneficial modifications unless fees are charged and new money is advanced.

The proposed rules would require creditors to determine whether a loan is a higher-priced mortgage loan by comparing the loan's rate without third-party fees (the "coverage rate") to the APOR. The coverage rate would be calculated using the loan's interest rate and the points and any other origination charges the creditor keeps for itself, and so would be closely comparable to the APOR. The precise costs to small entities of updating their systems are difficult to predict. The proposal would reduce potential compliance burden for all entities, including small entities, by ensuring that prime loans are not erroneously classified as higher-priced loans subject to the special protections in § 226.35(a).

The proposed rules would provide consumers with a right to a refund of fees during the three business days following the consumer's receipt of the early disclosures required under § 226.19(a). The right to a refund would

[206] Regulation Z generally applies to "each individual or business that offers or extends credit when four conditions are met: (i) the credit is offered or extended to consumers; (ii) the offering or extension of credit is done regularly, (iii) the credit is subject to a finance charge or is payable by a written agreement in more than four installments, and (iv) the credit is primarily for personal, family, or household purposes." § 226.1(c)(1).

[207] The 8,388 lenders (both depository institutions and mortgage companies) covered by HMDA in 2008 accounted for the majority of home lending in the United States. Under HMDA, lenders use a "loan/application register" (HMDA/LAR) to report information annually to their Federal supervisory agencies for each application and loan acted on during the calendar year. Only lenders that have offices (or, for non-depository institutions, lenders that are deemed to have offices) in metropolitan areas are required to report under HMDA. However, if a lender is required to report, it must report information on all of its home loan applications and loans in all locations, including non-metropolitan areas.

[208] *The 2008 HMDA Data, http://www.federalreserve.gov/pubs/bulletin/2010/pdf/hmda08final.pdf.*

likely delay processing the consumer's application until the three days expire, as creditors may not order an appraisal or issue a rate lock without charging a nonrefundable fee. These delays may inconvenience consumers, but it is not clear that the delays would impose costs on small entities. Small entities would, however, incur costs to revise their systems and train personnel to comply with the right to a refund. The precise costs to small entities of updating their systems and training personnel are difficult to predict. In addition, the proposal would require a short disclosure of the right to a refund on the "Key Questions" disclosure proposed in the Board's August 2009 Closed-End Proposal. This disclosure would impose no additional burden, as it would be included in the Key Questions document published by the Board and would not require institutions to tailor the disclosure to individual transactions.

The proposed rules would require creditors to provide a new "Key Questions" disclosure before a consumer applies for a reverse mortgage that would explain the product and identify potential risks. The current TALC rates required under § 226.33 would be replaced with dollar figures for the consumer's costs and how much they will owe, based on three life expectancies. The precise costs to small entities of updating their systems and disclosures are difficult to predict. These costs will depend on a number of unknown factors, including, among other things, the specifications of the current systems used by such entities to prepare and provide disclosures and to administer and maintain accounts, the complexity of the terms of credit products that they offer, and the range of such product offerings. Very few small entities likely offer reverse mortgages, however, so only a very small number would be affected by the proposed rules on reverse mortgages.

The proposed prohibition on conditioning a reverse mortgage on the purchase of an annuity or other insurance or financial product may lead to a loss of revenue, but the precise costs are difficult to ascertain. A safe harbor would be available if, among other things, a reverse mortgage is closed at least ten days before the sale of another product, thus reducing litigation risks and compliance costs. The proposed requirement that prospective borrowers receive independent counseling before a reverse mortgage is made may slow down the process, but should not otherwise impose costs on small entities. The Board is proposing rules that would apply to advertisements for HECMs and proprietary reverse mortgages, and to open-end mortgages. The Board believes that these proposed rules will require the same types of professional skills and recordkeeping procedures that are needed to comply with existing TILA and Regulation Z advertising rules. The cost to small entities will accordingly be mitigated.

To implement TILA Section 131(f)(2), the proposed rules also would provide that when a consumer requests information from his or her loan servicer about the owner of the loan, the servicer must provide certain information about the owner or master servicer of the loan within a reasonable time, which generally would be 10 business days. Although the precise costs to small servicers of providing these notices are difficult to predict, the Board does not anticipate substantial burden on small servicers in providing these notices. RESPA already provides consumers with the right to obtain information from a servicer by making a "qualified written request,"[209] but a servicer in that case has 60 days to provide the requested information.[210] The Board does not expect, however, that requiring loan servicers to provide information about the current owner or master servicer of the loan in a shorter time frame, such as 10 business days, would impose a significant burden on servicers because they should already possess or may easily obtain that information.

Finally, the proposed rules would require creditors to provide revised disclosures when offering or requiring a credit protection product in connection with a credit transaction. The revised disclosure would explain the product and identify potential risks. The precise costs to small entities of updating their systems and disclosures are difficult to predict.

The Board believes that costs of the proposed rules as a whole will have a significant economic effect on small entities, including small mortgage creditors and servicers. The Board seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rules to small businesses.

[209] 12 U.S.C. 2600 *et seq.* (implemented by Regulation X, 12 CFR part 3500).

[210] 12 U.S.C. 2605(e)(2); 24 CFR 3500.21(e).

E. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

Other Federal Rules

The Board has not identified any Federal rules that conflict with the proposed revisions to Regulation Z.

Overlap With RESPA

HUD issued Frequently Asked Questions suggesting that a creditor may impose a nonrefundable fee under the Real Estate Settlement Procedures Act (RESPA) if the consumer receives a Good Faith Estimate (GFE) and expresses an intent to proceed with the loan covered by the GFE.[211] Under the proposed rule, however, the consumer would have a right to a refund of all fees during the three business days following receipt of the early disclosures required under § 226.19(a).

The proposed rules governing early disclosures for closed-end reverse mortgages may overlap with RESPA requirements that closed-end reverse mortgage consumers receive a GFE.

RESPA provides consumers with the right to obtain information from a servicer by making as "qualified written request,"[212] and the servicer has 60 days to provide the requested information.[213] Under the proposed rule, however, when a consumer requests information from his or her loan servicer about the owner of the loan, the servicer must provide certain information about the owner or master servicer of the loan within a reasonable time after the request, which generally would be 10 business days.

Overlap With HUD's Guidance

The Board recognizes that HUD issued guidance on HECMs. The Board intends that its proposal be consistent with HUD's guidance for HECMs, and complement HUD's guidance by extending certain protections to proprietary reverse mortgages.

The Board seeks comment regarding any Federal rules that would duplicate, overlap, or conflict with the proposed rules.

F. Identification of Duplicative, Overlapping, or Conflicting State Laws

State Equivalents to TILA and HOEPA

Many states regulate consumer credit through statutory disclosure schemes similar to TILA. Under TILA Section

[211] *New RESPA Rule Facts* 7, *available at http://www.hud.gov/offices/hsg/ramh/res/resparulefaqs422010.pdf.*

[212] 12 U.S.C. 2600 *et seq.* (implemented by Regulation X, 12 CFR part 3500).

[213] 12 U.S.C. 2605(e)(2); 24 CFR 3500.21(e).

111, the proposed rules would not preempt such State laws except to the extent they are inconsistent with the proposal's requirements. 15 U.S.C. 1610.

Currently, whether there is a refinancing depends on the parties' intent and State law. State court decisions are the predominant type of State law, and focus on whether the original obligation has been satisfied and replaced, or merely modified, in order to determine lien-holder priority. Reliance on State law leads to inconsistent application of Regulation Z and, in some cases, to loopholes. The proposed rules would not preempt such State laws except to the extent they are inconsistent with the proposal's requirements. *Id.*

The Board also is aware that many states regulate "high-cost" or "high-priced" mortgage loans under laws that resemble HOEPA. Many of these State laws involve coverage tests that partly depend on the APR of the transaction. The proposed rules would overlap with these laws by requiring lenders to determine whether a loan is a higher-priced mortgage loan by comparing the loan's coverage rate to the APOR.

Some State laws deal with reverse mortgage counseling, cross-selling, and suitability standards, and with credit insurance. The proposed rules would not preempt such State laws except to the extent they are inconsistent with the proposal's requirements. *Id.*

The Board seeks comment regarding any state or local statutes or regulations that would duplicate, overlap, or conflict with the proposed rules.

G. Discussion of Significant Alternatives

The steps the Board has taken to minimize the economic impact and compliance burden on small entities, including the factual, policy, and legal reasons for selecting the alternatives adopted and why each one of the other significant alternatives was not accepted, are described above in the SUPPLEMENTARY INFORMATION. The Board has provided a different standard for defining higher-priced mortgage loans to correspond more accurately to mortgage market conditions, and exclude from the definition some prime loans that might otherwise have been classified as higher-priced. The Board believes that this standard will decrease the economic impact of the proposed rules on small entities by limiting their compliance costs for prime loans that the Board does not intend to cover under the higher-priced mortgage loan rules.

The Board welcomes comments on any significant alternatives, consistent with the requirements of TILA, that would minimize the impact of the proposed rules on small entities.

List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in Lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold arrows, and language that would be deleted is shown inside bold brackets.

Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to amend Regulation Z, 12 CFR part 226, as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), and 1639(l); Pub. L. 111–24 § 2, 123 Stat. 1734.

Subpart A—General

2. Section 226.1 is amended by revising paragraphs (d)(5) and (d)(8) to read as follows:

§ 226.1 Authority, purpose, coverage, organization, enforcement, and liability.

* * * * *

(d) * * *

(5) Subpart E contains special rules for certain mortgage transactions. Section 226.32 requires certain disclosures and provides limitations for loans that have rates and fees above specified amounts. Section 226.33 **[**requires**]** ►contains rules on◄ disclosures**[**, including the total annual loan cost rate,**]** ►and advertising◄ for reverse mortgages. Section 226.34 prohibits specific acts and practices in connection with mortgage transactions that are subject to § 226.32. Section 226.35 prohibits specific acts and practices in connection with higher-priced mortgage loans, as defined in § 226.35(a). Section 226.36 prohibits specific acts and practices in connection with credit secured by a consumer's principal dwelling. ►Section 226.40 prohibits specific acts and practices in connection with reverse mortgages.◄

* * * * *

(8) Several appendices contain information such as the procedures for determinations about State laws, state exemptions and issuance of staff interpretations, special rules for certain kinds of credit plans, a list of enforcement agencies, and the rules for computing annual percentage rates in closed-end credit transactions **[**and total-annual-loan-cost rates for reverse mortgage transactions**]**.

* * * * *

3. Section 226.2 is amended by revising paragraphs (a)(6) and (a)(11) to read as follows:

§ 226.2 Definitions and rules of construction.

(a) * * *

(6) *Business day* means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under §§ 226.15 and 226.23, and for purposes of ►§ 226.5b(e), § 226.9(j)(2),◄ § 226.19(a)(1)(ii), ►§ 226.19(a)(1)(iv),◄ § 226.19(a)(2), § 226.31, ►§ 226.33(d)(1)(ii), § 226.33(d)(2), § 226.40(b)(2)◄ and § 226.46(d)(4), the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

* * * * *

(11) *Consumer* means a cardholder or a natural person to whom consumer credit is offered or extended. However, for purposes of rescission under §§ 226.15 and 226.23, the term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest. ►For purposes of the counseling requirements under § 226.40(b) for reverse mortgages subject to § 226.33, the term is defined in § 226.40(b)(7).◄

* * * * *

4. Section 226.4 is amended by revising paragraphs (d)(1), (d)(3), and (d)(4) to read as follows:

§ 226.4 Finance charge.

* * * * *

(d) *Insurance and debt cancellation and debt suspension coverage.* (1) *Voluntary credit insurance premiums.* ►Except as provided in § 226.4(g), premiums◄**[**Premiums**]** for credit life, accident, health, or loss-of-income insurance may be excluded from the finance charge if the following conditions are met ►before the consumer enrolls in the credit insurance policy written in connection with the credit transaction◄:

(i) [The insurance coverage is not required by the creditor, and this fact is disclosed in writing.] ►The creditor clearly and conspicuously in a minimum 10-point font provides the following disclosures, which shall be grouped together and substantially similar in headings, content, and format to Model Form G–16(A) or H–17(A) in Appendix G or H of this part, as applicable:

(A) A heading disclosing the optional nature of the product, together with the name of the product;

(B) A statement that the consumer should stop to review the disclosure, together with a statement that the consumer does not have to buy the product to get or keep the loan or line of credit, as applicable;

(C) A statement that the consumer may visit the Web site of the Federal Reserve Board to learn more about the product, and a reference to that Web site;

(D) The following information in a tabular and question-and-answer format:

(*1*) A statement that if the consumer already has enough insurance or savings to pay off or make payments on the debt if a covered event occurs, the consumer may not need the product;

(*2*) A statement that other types of insurance can give the consumer similar benefits and are often less expensive;

(*3*) A statement of the maximum premium or charge per period, together with a statement that the cost depends on the consumer's balance or interest rate, as applicable;

(*4*) A statement of the maximum benefit amount, together with a statement that the consumer will be responsible for any balance due above the maximum benefit amount, as applicable;

(*5*) A statement that the consumer meets the age and employment eligibility requirements, as required under paragraph (d)(1)(ii) of this section;

(*6*) If there are other eligibility requirements in addition to age and employment, a statement in bold, underlined text that the consumer may not receive any benefits even if the consumer purchases the product, together with a statement that there are other requirements that the consumer may not meet and that, if the consumer does not meet these requirements, the consumer will not receive any benefits even if the consumer purchases the product and pays the periodic premium or charge; and

(*7*) A statement of the time period and age limit for coverage;

(E) A checkbox and a statement that the consumer wants to purchase the optional product, together with a statement of the maximum premium or charge per period; and

(F) A designation for the consumer's signature or initials.◄

(ii) [The premium for the initial term of insurance coverage is disclosed in writing. If the term of insurance is less than the term of the transaction, the term of insurance also shall be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.] ►The creditor determines prior to or at the time of enrollment that the consumer meets any applicable age or employment eligibility criteria for insurance coverage; and◄

(iii) The consumer signs or initials an affirmative written request for the insurance after receiving the disclosures specified in paragraph (d)(1)(i) of this section, except as provided in paragraph (d)(4) of this section. Any consumer in the transaction may sign or initial the request.

* * * * *

(3) *Voluntary debt cancellation or debt suspension fees.* ►Except as provided in § 226.4(g), charges◄ [Charges] or premiums paid for debt cancellation coverage for amounts exceeding the value of the collateral securing the obligation or for debt cancellation or debt suspension coverage in the event of the loss of life, health, or income or in case of accident may be excluded from the finance charge, whether or not the coverage is insurance, if the following conditions are met ►before the consumer enrolls in the coverage written in connection with the credit transaction◄:

(i) [The debt cancellation or debt suspension agreement or coverage is not required by the creditor, and this fact is disclosed in writing;

(ii) The fee or premium for the initial term of coverage is disclosed in writing. If the term of coverage is less than the term of the credit transaction, the term of coverage also shall be disclosed. The fee or premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving a debt cancellation agreement that limits the total amount of indebtedness subject to coverage;

(iii) The following are disclosed] ► The creditor clearly and conspicuously provides in a minimum 10-point font the disclosures specified in paragraph (d)(1)(i) of this section, which shall be grouped together and substantially similar in headings, content, and format to Model Form G–16(A) or H–17(A) in Appendix G or H of this part, as applicable, including a disclosure◄, as applicable, for debt suspension coverage[: That] ►that◄ the obligation to pay loan principal and interest is only suspended, [and] that interest will continue to accrue during the period of suspension ►, and that the balance will increase during the suspension period◄;

►(ii) The creditor determines prior to or at the time of enrollment that the consumer meets any applicable age or employment eligibility criteria for the debt cancellation or debt suspension coverage; and◄

[(iv)] ►(iii)◄ The consumer signs or initials an affirmative written request for coverage after receiving the disclosures specified in paragraph (d)(3)(i) of this section, except as provided in paragraph (d)(4) of this section. Any consumer in the transaction may sign or initial the request.

(4) *Telephone purchases.* If a consumer purchases credit insurance or debt cancellation or debt suspension coverage for an open-end [(not home-secured)] plan by telephone, the creditor must make the disclosures under paragraphs (d)(1)(i) [and (ii)] or (d)(3)(i) [through (iii)] of this section, as applicable, orally. In such a case, the creditor shall:

(i) Maintain evidence that the consumer, after being provided the disclosures orally, affirmatively elected to purchase the insurance or coverage; and

(ii) Mail the disclosures under paragraphs (d)(1)(i) [and (ii)] or (d)(3)(i) [through (iii)] of this section, as applicable, within three business days after the telephone purchase.

* * * * *

Subpart B—Open-End Credit

5. Section 226.5 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 226.5 General disclosure requirements.

(a) * * *

(1) * * *

(ii) The creditor shall make the disclosures required by this subpart in writing,[7] in a form that the consumer may keep,[8] except that:

(A) The following disclosures need not be written:

---

[7] [Reserved].

[8] [Reserved].

►(*1*) Disclosures under § 226.6(a)(3) of charges that are imposed as part of a home-equity plan that are not required to be disclosed under § 226.6(a)(2) or § 226.33(c) and related disclosures under § 226.9(c)(1)(ii)(B) of charges;

(*2*)◄ Disclosures under § 226.6(b)(3) of charges that are imposed as part of an open-end (not home-secured) plan that are not required to be disclosed under § 226.6(b)(2) and related disclosures under § 226.9(c)(2)(ii)(B) of charges;

►(*3*) Disclosures◄ [disclosures] under § 226.9(c)(2)(v); and

►(*4*) Disclosures◄ [disclosures] under § 226.9(d) when a finance charge is imposed at the time of the transaction.

(B) The following disclosures need not be in a retainable form:

►(*1*)◄ Disclosures that need not be written under paragraph (a)(1)(ii)(A) of this section;

►(*2*) Disclosures◄ [disclosures] for credit and charge card applications and solicitations under § 226.5a; [home-equity disclosures under § 226.5b(d);]

►(*3*) The◄ [the] alternative summary billing-rights statement under § 226.9(a)(2);

►(*4*) The◄ [the] credit and charge card renewal disclosures required under § 226.9(e); and

►(*5*) The◄ [the] payment requirements under § 226.10(b), except as provided in § 226.7(b)(13).

* * * * *

6. Section 226.5b, as proposed to be amended on Aug. 26, 2009 (74 FR 43428), is further amended by revising the introductory text and paragraphs (d), (e), (f)(2) introductory text, and (f)(4), and adding new paragraph (h) to read as follows:

§ 226.5b Requirements for home equity plans.

The requirements of this section apply to open-end credit plans secured by the consumer's dwelling►, except as provided in paragraph (i) of this section◄.

* * * * *

(d) *Refund of fees.* A creditor shall refund all fees paid by the consumer if any term required to be disclosed under paragraph (b) of this section changes (other than a change due to fluctuations in the index in a variable-rate plan►, or changes to the disclosures required by § 226.33(c)(3), (c)(5) or (c)(8) due to changes in the type of payment the consumer receives, or verification of the appraised property value or the consumer's age ◄) before the plan is opened and the consumer elects not to open the plan.

(e) *Imposition of nonrefundable fees.* Neither a creditor nor any other person may impose a nonrefundable fee until three business days after the consumer receives the disclosures required under paragraph (b) of this section ►or § 226.33(d)(1)◄.[10d] If the disclosures required under this section are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

(f) * * *

(2) Terminate a plan and demand repayment of the entire outstanding balance in advance of the original term (except for reverse mortgage►s◄ [transactions] that are subject to paragraph (f)(4) of this section) unless:

* * * * *

(4) For reverse mortgage►s◄ [transactions] that are subject to § 226.33, terminate a plan and demand repayment of the entire outstanding balance in advance of the original term except:

(i) In the case of default;

(ii) If the consumer transfers title to the property securing the note;

(iii) If the consumer ceases using the property securing the note as the primary dwelling; or

(iv) Upon the consumer's death.

* * * * *

►(h) *Reverse mortgages.* For reverse mortgages that are subject to § 226.33, the creditor must comply with the requirements for open-end reverse mortgages in § 226.33 and not with paragraphs (a) through (c) of this section.◄

* * * * *

7. Section 226.6, as proposed to be amended on August 26, 2009 (74 FR 43428), is further amended by revising paragraphs (a) introductory text, (a)(5) introductory text, and (a)(5)(i), and § 226.6 is also amended by revising paragraphs (b)(5) introductory text and (b)(5)(i) to read as follows:

§ 226.6 Account-opening disclosures.

(a) *Rules affecting home-equity plans.* The requirements of paragraph (a) of this section apply only to home equity plans subject to § 226.5b. ►The requirements of paragraphs (a)(1), (a)(2), (a)(5)(i), and (a)(5)(v) do not apply to reverse-mortgage transactions.◄

* * * * *

(5) *Additional disclosures for home-equity plans.* A creditor shall disclose [to the extent applicable] ►or comply with, as applicable◄:

(i) [Voluntary]►*Required or voluntary*◄ *credit insurance, debt cancellation* ►*coverage,*◄ *or debt suspension* ►*coverage*◄. The disclosures ►and requirements◄ in § 226.4(d)(1)(i) [and (d)(1)(ii)] ►through (d)(1)(iii)◄ and (d)(3)(i) through (d)(3)(iii)►, as applicable,◄ if the creditor offers optional credit insurance,[or] debt cancellation ►coverage◄ or debt suspension coverage that is identified in § 226.4(b)(7) or (b)(10). ►For required credit insurance, debt cancellation coverage, or debt suspension coverage that is identified in § 226.4(b)(7) or (b)(10), the creditor shall provide the disclosures required in § 226.4(d)(1)(i) and (d)(3)(i), as applicable, except for § 226.4(d)(1)(i)(A), (B), (D)(5), (E) and (F).◄

* * * * *

(b) * * *

(5) *Additional disclosures for open-end (not home-secured) plans.* A creditor shall disclose ►or comply with, as◄[to the extent] applicable:

(i) [*Voluntary*]►*Required or voluntary*◄ *credit insurance, debt cancellation* ►*coverage*◄*, or debt suspension* ►*coverage*◄*.* The disclosures ►and requirements◄ in § 226.4(d)(1)(i) [and (d)(1)(ii)]►through (d)(1)(iii)◄ and (d)(3)(i) through (d)(3)(iii) ►,as applicable,◄ if the creditor offers optional credit insurance, [or] debt cancellation ►coverage,◄ or debt suspension coverage that is identified in § 226.4(b)(7) or (b)(10). ►For required credit insurance, debt cancellation coverage, or debt suspension coverage that is identified in § 226.4(b)(7) or (b)(10), the creditor shall provide the disclosures required in § 226.4(d)(1)(i) and (d)(3)(i), as applicable, except for § 226.4(d)(1)(i)(A), (B), (D)(5), (E) and (F).◄

* * * * *

8. Section 226.7 is amended by revising paragraph (a)(8) to read as follows:

§ 226.7 Periodic statement.

* * * * *

(a) . * * *

(8) *Grace period.* ►Except for reverse mortgages that are subject to § 226.33, t◄[T]he date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge if payment is received after the time period's expiration.

* * * * *

9. Section 226.9 is amended by revising paragraphs (b)(1) and (2), redesignating paragraph (c)(1)(ii) as paragraph (c)(1)(iv) and revising it, revising paragraph (c)(1)(iii), and adding

[10d] Reserved.

new paragraph (c)(1)(ii) to read as follows:

§ 226.9 Subsequent disclosure requirements.

* * * * *

(b) *Disclosures for supplemental credit access devices and additional features.* (1) If a creditor, within 30 days after mailing or delivering the account-opening disclosures under ►§ ◄§ 226.6(a)(1)►,◄ [or] ►6◄(b)(3)(ii)(A), ►or 226.33(d)(2) and (d)(4)(i),◄ as applicable, adds a credit feature to the consumer's account or mails or delivers to the consumer a credit access device, including but not limited to checks that access a credit card account, for which the finance charge terms are the same as those previously disclosed, no additional disclosures are necessary. Except as provided in paragraph (b)(3) of this section, after 30 days, if the creditor adds a credit feature or furnishes a credit access device (other than as a renewal, resupply, or the original issuance of a credit card) on the same finance charge terms, the creditor shall disclose, before the consumer uses the feature or device for the first time, that it is for use in obtaining credit under the terms previously disclosed.

(2) Except as provided in paragraph (b)(3) of this section, whenever a credit feature is added or a credit access device is mailed or delivered to the consumer, and the finance charge terms for the feature or device differ from disclosures previously given, the disclosures required by ►§ ◄§ 226.6(a)(1)►,◄ [or] ►6◄(b)(3)(ii)(A), ►or 226.33(d)(2) and (d)(4)(i),◄ as applicable, that are applicable to the added feature or device shall be given before the consumer uses the feature or device for the first time.

* * * * *

(c) *Change in terms.* (1) *Rules affecting home-equity plans.*—(i) *Written notice required.* * * *

►(ii) *Charges not covered by § 226.6(a)(1) and (a)(2) or § 226.33.* Except as provided in paragraph (c)(1)(iv) of this section, if a creditor increases any component of a charge or provides for a new charge required to be disclosed under § 226.6(a)(3) that is not required to be disclosed in a tabular format under §§ 226.6(a)(2) or 226.33(d)(4), a creditor may either, at its option:

(A) Comply with the requirements of paragraph (c)(1)(i) of this section; or

(B) Provide notice of the amount of the charge before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure of the charge. The notice may be provided orally or in writing.

(iii) *Disclosure requirements.*—(A) *Changes to terms described in account-opening table.* If a creditor changes a term required to be disclosed in a tabular format pursuant to §§ 226.6(a)(1) and (a)(2), or 226.33(d)(4)(i), the creditor must provide the following information on the notice provided pursuant to paragraph (c)(1)(i) of this section:

(*1*) A summary of the changes made to terms required by §§ 226.6(a)(1) and (2) or 226.33(d)(4)(i);

(*2*) A statement that changes are being made to the account;

(*3*) A statement indicating the consumer has the right to opt out of these changes, if applicable, and a reference to additional information describing the opt-out right provided in the notice, if applicable;

(*4*) The date the changes will become effective; and

(*5*) If applicable, a statement that the consumer may find additional information about the summarized changes, and other changes to the account, in the notice.

(B) *Format requirements.*—(*1*) *Tabular format.* The summary of changes described in paragraph (c)(1)(iii)(A)(*1*) of this section must be in a tabular format, with headings and format substantially similar to any of the account-opening tables found in G–15 in Appendix G to this part, or for reverse mortgages, in K–2 and K–5 in Appendix K to this part. The table must disclose the changed term(s) and information relevant to the change(s), if that relevant information is required by §§ 226.6(a)(1) and (a)(2), or 226.33(c) and (d)(4). The new terms must be described with the same level of detail as required when disclosing the terms under § 226.6(a)(2) or § 226.33(c).

(*2*) *Notice included with periodic statement.* If a notice required by paragraph (c)(1)(i) of this section is included on or with a periodic statement, the information described in paragraph (c)(1)(iii)(A)(1) of this section must be disclosed on the front of any page of the statement. The summary of changes described in paragraph (c)(1)(iii)(A)(1) of this section must immediately follow the information described in paragraph (c)(1)(iii)(A)(2) through (c)(1)(iii)(A)(5) of this section, and be substantially similar to the format shown in Sample G–25 in Appendix G to this part.

(*3*) *Notice provided separately from periodic statement.* If a notice required by paragraph (c)(1)(i) of this section is not included on or with a periodic statement, the information described in paragraph (c)(1)(iii)(A)(1) of this section must, at the creditor's option, be disclosed on the front of the first page of the notice or segregated on a separate page from other information given with the notice. The summary of changes required to be in a table pursuant to paragraph (c)(1)(iii)(A)(1) of this section may be on more than one page, and may use both the front and reverse sides, so long as the table begins on the front of the first page of the notice and there is a reference on the first page indicating that the table continues on the following page. The summary of changes described in paragraph (c)(1)(iii)(A)(1) of this section must immediately follow the information described in paragraph (c)(1)(iii)(A)(2) through (c)(1)(iii)(A)(5) of this section, substantially similar to the format shown in Sample G–25 in Appendix G to this part.◄

►(iv)◄[(ii)] *Notice not required.* For home-equity plans subject to the requirements of § 226.5b, a creditor is not required to provide notice under this section when the change involves a reduction of any component of a finance or other charge or when the change results from an agreement involving a court proceeding. ►Suspension of credit privileges, reduction of a credit limit, or termination of an account do not require notice under paragraph (c)(1)(i) of this section, but must be disclosed pursuant to paragraph (j) of this section.◄

[(iii) *Notice to restrict credit.* For home-equity plans subject to the requirements of § 226.5b, if the creditor prohibits additional extensions of credit or reduces the credit limit pursuant to § 226.5b(f)(3)(i) or (f)(3)(vi), the creditor shall mail or deliver written notice of the action to each consumer who will be affected. The notice must be provided not later than three business days after the action is taken and shall contain specific reasons for the action. If the creditor requires the consumer to request reinstatement of credit privileges, the notice also shall state that fact.]

* * * * *

10. Section 226.15 is revised to read as follows:

§ 226.15 Right of rescission.

(a) *Consumer's right to rescind.* (1) ►*Coverage.*◄—(1)(i) Except as provided in paragraph►s◄ (a)(1)(ii) ►and (f)◄ of this section, in a credit plan in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind ►the following transactions◄: each credit extension made under the plan; the plan when the plan is opened; a security interest when added or increased to secure an existing plan; and the increase when a credit limit on the plan is increased.

(ii) As provided in section 125(e) of the Act, the consumer does not have the right to rescind each credit extension made under the plan if such extension is made in accordance with a previously established credit limit for the plan.

(2) ►*Exercise of the right.* (i) *Provision of written notification.*◄ To exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail [, telegram,] or other means of written communication. Notice is considered given when mailed, [or when filed for telegraphic transmission,] or, if sent by other means, when delivered to the [creditor's designated place of business.]► appropriate party identified in paragraph (a)(2)(ii) of this section within the applicable time period.

(ii) *Party the consumer shall notify.* (A) *During the three-business-day period following the transaction.* To exercise the right to rescind during the three-business-day period following the transaction that gave rise to the right of rescission, the consumer shall mail or deliver written notice of the rescission to the creditor or the creditor's agent for receiving such notice, as designated on the notice provided by the creditor pursuant to paragraph (b) of this section. Where no designation is provided, mailing or delivering notice to the servicer, as defined in § 226.36(c)(3), constitutes delivery to the creditor.

(B) *After the three-business-day period following the transaction.* To exercise an extended right to rescind after the three-business-day period following the transaction that gave rise to the right of rescission, the consumer shall mail or deliver written notice of the rescission to the current owner of the debt obligation. A notice of rescission mailed or delivered to the servicer, as defined in § 226.36(c)(3), shall constitute delivery to the current owner.◄

(3) ►*Rescission period.* (i) *Three business days.*◄ The consumer [may exercise]►has◄ the right to rescind until midnight [of] ►after◄ the third business day following the ►transaction◄[occurrence] described in paragraph (a)(1) of this section that gave rise to the right of rescission, delivery of the notice required by paragraph (b) of this section, or delivery of all material disclosures ►required by paragraph (a)(5) of this section◄,[36] whichever occurs last.

►(ii) *Unexpired right of rescission.* (A) *Up to three years.*◄ If the [required] notice ►required by paragraph (b) of this section or◄ [and] material disclosures ►required by paragraph (a)(5) of this section◄ are not delivered, the right to rescind shall expire three years after the ►transaction◄ [occurrence] giving rise to the right of rescission, [or] upon transfer of all of the consumer's interest in the property, [or upon] sale of the property►, refinancing with a creditor other than the current holder, or paying off of the obligation◄, whichever occurs first.

►(B) *Extension in connection with certain administrative proceedings.*◄ In the case of certain administrative proceedings, the rescission period shall be extended in accordance with section 125(f) of the Act.

(4) ►*Joint owners.*◄ When more than one consumer has the right to rescind, the exercise of the right by one consumer shall be effective as to all consumers.

►(5)(i) *Definition of material disclosures.* For purposes of this section, the term *material disclosures* means the following disclosures required under § 226.6(a)(2) or § 226.33(c):

(A) Any annual percentage rate, information related to introductory rates, and information related to variable rate plans disclosed under § 226.6(a)(2)(vi) or § 226.33(c)(6)(i) except for the lowest and highest value of the index in the past 15 years disclosed under § 226.6(a)(2)(vi)(A)(*1*)(*vi*) or § 226.33(c)(6)(i)(A)(*1*)(*vi*);

(B) The total of all one-time fees imposed by the creditor and any third parties to open the plan disclosed under § 226.6(a)(2)(vii) or § 226.33(c)(7)(i)(A);

(C) Any annual or other periodic fees that may be imposed by the creditor for the availability of the plan (including any fee based on account activity or inactivity), how frequently the fee will be imposed, and the annualized amount of the fee disclosed under § 226.6(a)(2)(viii) or § 226.33(c)(7)(ii);

(D) Any fee that may be imposed by the creditor if a consumer terminates the plan prior to its scheduled maturity disclosed under § 226.6(a)(2)(ix) or § 226.33(c)(7)(iii);

(E) The length of the plan, the length of the draw period and the length of any repayment period disclosed under § 226.6(a)(2)(v)(A);

(F) An explanation of how the minimum periodic payment will be determined and the timing of the payments. If paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance by the end of the plan, a statement of this fact, as well as a statement that a balloon payment may result or will result, as applicable, disclosed under § 226.6(a)(2)(v)(B);

(G) If applicable, a statement that negative amortization may occur and that negative amortization increases the principal balance and reduces the consumer's equity in the dwelling disclosed under § 226.6(a)(2)(xvi);

(H) Any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw requirements disclosed under § 226.6(a)(2)(xvii) or § 226.33(c)(7)(v);

(I) The credit limit applicable to the plan disclosed under § 226.6(a)(2)(xviii); and

(J) A fee for insurance described in § 226.4(b)(7) or debt cancellation or suspension coverage described in § 226.4(b)(10), if the insurance or debt cancellation or suspension coverage is required as part of the plan as disclosed under § 226.6(a)(2)(xx).

(ii) *Tolerances for accuracy of total of all one-time fees imposed by the creditor and any third parties to open the plan.* The total of all one-time fees imposed by the creditor and any third parties to open the plan and other disclosures affected by the total shall be considered accurate for purposes of this section if the disclosed total of all one-time fees imposed by the creditor and any third parties to open the plan:

(A) Is understated by no more than $100; or

(B) Is greater than the amount required to be disclosed under § 226.6(a)(2)(vii) or § 226.33(c)(7)(i)(A).

(iii) *Tolerances for accuracy of the credit limit applicable to the plan.* The credit limit applicable to the plan shall be considered accurate for purposes of this section if the disclosed credit limit applicable to the plan:

(A) Is overstated by no more than ½ of 1 percent of the credit limit applicable to the plan required to be disclosed under § 226.6(a)(2)(xviii) or $100, whichever is greater; or

[36] ►[Reserved.]◄ [The term *material disclosures* means the information that must be provided to satisfy the requirements in § 226.6 with regard to the method of determining the finance charge and the balance upon which a finance charge will be imposed, the annual percentage rate, the amount or method of determining the amount of any membership or participation fee that may be imposed as part of the plan, and the payment information described in § 226.5b(d)(5)(i) and (ii) that is required under § 226.6(e)(2).]

(B) Is less than the amount required to be disclosed under § 226.6(a)(2)(xviii).◄

(b) *Notice of right to rescind.* ►(1) *Who receives notice.*◄ In any transaction [or occurrence] subject to rescission, a creditor shall deliver [two copies of] the notice of the right to rescind to each consumer entitled to rescind. [(one copy to each if the notice is delivered in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act). The notice shall identify the transaction or occurrence and clearly and conspicuously disclose the following:

(1) The retention or acquisition of a security interest in the consumer's principal dwelling.

(2) The consumer's right to rescind, as described in paragraph (a)(1) of this section.

(3) How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.

(4) The effects of rescission, as described in paragraph (d) of this section.

(5) The date the rescission period expires.]

►(2) *Format of notice.* (i) *Grouped and segregated.* The disclosures required under paragraph (b)(3) of this section and the optional disclosures permitted under paragraph (b)(4) of this section shall appear on the front side of a one-page document, separate from all other unrelated material. The disclosures required by paragraph (b)(3)(i)–(vii) of this section shall appear grouped together in the notice. The disclosures required by paragraph (b)(3)(viii) of this section shall appear grouped together and shall be segregated from all other information in the notice. The notice shall not contain any other information not directly related to the disclosures required under paragraph (b)(3) of this section.

(ii) *Specific format.* The title of the notice shall appear at the top of the notice. The disclosures required by paragraph (b)(3)(i)–(vii) of this section shall appear beneath the title and be in the form of a table. If the creditor chooses to place in the notice one or both of the optional disclosures described in paragraph (b)(4) of this section, the text shall follow the disclosures required by paragraph (b)(3)(i)–(vii) of this section, but appear before the segregated disclosures required by paragraph (b)(3)(viii) of this section. If both statements described in paragraph (b)(4) of this section are inserted, the statement described in paragraph (b)(4)(i) of this section shall appear before the statement described in paragraph (b)(4)(ii) of this section. The disclosures required by paragraph (b)(3) of this section and any optional disclosures permitted under paragraph (b)(4) of this section must be given in a minimum 10–point font. If the creditor chooses to insert an acknowledgement as described in paragraph (b)(4)(ii) of this section, the acknowledgement must be disclosed in a format substantially similar to the format used in Model Form G–5(A) in Appendix G to this part.

(3) *Required content of notice.* The creditor shall clearly and conspicuously disclose the following information in the notice:

(i) *Identification of the transaction.* An identification of the type of transaction giving rise to the right of rescission.

(ii) *Security interest.* A statement that the consumer could lose his or her home if the consumer does not repay the money owed under the obligation that is secured by the home.

(iii) *Right to cancel.* A statement that the consumer has the right under Federal law to cancel the transaction on or before the stated date. If paragraph (c) of this section applies, a statement that Federal law prohibits the creditor from making any funds (or certain funds, as applicable) available to the consumer until after the stated date.

(iv) *Fees.* A statement that, if the consumer cancels, the creditor will not charge the consumer a cancellation fee and will refund any fees the consumer paid in connection with the transaction giving rise to the right of rescission.

(v) *Effect of cancellation on existing line of credit.* As applicable, the following statements:

(A) A statement that if the consumer cancels the transaction giving rise to the right of rescission, all of the terms of the consumer's current line of credit with the creditor will still apply;

(B) A statement that the consumer will still owe the creditor the current balance; and

(C) Except for a reverse mortgage, if some or all of that money is secured by the home, a statement that the consumer could lose his or her home if the consumer does not repay the money that is secured by the home.

(vi) *How to cancel.* The name and postal address for regular mail of the creditor or its agent and a statement that the consumer may cancel by submitting the form located at the bottom of the notice to the address provided.

(vii) *Deadline to cancel.* The calendar date on which the three-business-day rescission period expires, together with a statement that the right to cancel the transaction may extend beyond this date and in that case the consumer must submit the form located at the bottom of the notice to either the current owner of the line of credit or the person to whom the consumer sends his or her payments. If the creditor cannot provide an accurate calendar date on which the three-business-day rescission period expires, the creditor must provide the calendar date on which it reasonably and in good faith expects the three-business-day period for rescission to expire. If the creditor provides a date in the notice that gives the consumer a longer period within which to rescind than the actual period for rescission, the notice shall be deemed to comply with this paragraph, as long as the creditor permits the consumer to rescind through the end of the date in the notice. If the creditor provides a date in the notice that gives the consumer a shorter period within which to rescind than the actual period for rescission, the creditor shall be deemed to comply with the requirement in this paragraph if the creditor notifies the consumer that the deadline in the first notice of the right of rescission has changed and provides a second notice to the consumer stating that the consumer's right to rescind expires on a calendar date which is three business days from the date the consumer receives the second notice.

(viii) *Form for consumer's exercise of right.* A form that the consumer may use to exercise the right of rescission, which includes spaces for entry of the consumer's name and property address. At a creditor's option, the creditor may pre-print on the form the consumer's name, property address and account number, but may not request that or require the consumer to provide the account number.

(4) *Optional content of notice.* (i) *Exercise of right by joint owners.* At a creditor's option, a statement that joint owners may have the right to rescind and that a rescission by one owner is effective for all owners.

(ii) *Acknowledgement of receipt.* At a creditor's option, a statement the consumer may use to acknowledge receipt of the notice.

(5) *Time of providing notice.* The notice required by paragraph (b) of this section shall be provided before the transaction that gives rise to the right of rescission.

(6) *Proper form of notice.* A creditor satisfies the disclosure requirements of paragraph (b)(3) of this section if it provides the model form in Appendix G of this part, or a substantially similar notice, which is properly completed with the disclosures required by paragraph (b)(3) of this section.◄

(c) *Delay of creditor's performance.* Unless a consumer waives the right to rescind under paragraph (e) of this section, no money shall be disbursed other than in escrow, no services shall be performed, and no materials delivered until after the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded. A creditor does not violate this section if a third party with no knowledge of the event activating the rescission right does not delay in providing materials or services, as long as the debt incurred for those materials or services is not secured by the property subject to rescission.

(d)►(1)◄ *Effects of rescission* ►*prior to the creditor disbursing funds.* This paragraph applies if the creditor has not, directly or indirectly through a third party, disbursed money or delivered property, and the consumer's right to rescind has not expired.◄

【(1)】►(i) *Effect of consumer's notice of rescission.*◄ When a consumer 【rescinds a transaction】►provides a notice of rescission to a creditor ◄, the security interest giving rise to the right of rescission becomes void and the consumer shall not be liable for any amount, including any finance charge.

【(2)】►(ii) *Creditor's obligations.*◄ Within 20 calendar days after receipt of a 【notice of rescission, the creditor shall return any money or property that has been given to anyone】►consumer's notice of rescission, the creditor shall return to the consumer any money that the consumer has given to the creditor or a third party◄ in connection with the transaction and shall take 【any action】 ►whatever steps are◄ necessary to 【reflect the termination of the】►terminate its◄ security interest.

【(3) If the creditor has delivered any money or property, the consumer may retain possession until the creditor has met its obligation under paragraph (d)(2) of this section. When the creditor has complied with that paragraph, the consumer shall tender the money or property to the creditor or, where the latter would be impracticable or inequitable, tender its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. Tender of money must be made at the creditor's designated place of business. If the creditor does not take possession of the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

(4) The procedures outlined in paragraphs (d)(2) and (3) of this section may be modified by court order.】

►(2) *Effects of rescission after the creditor disburses funds.* This paragraph applies if the creditor has, directly or indirectly through a third party, disbursed money or delivered property, and the consumer's right to rescind has not expired under § 226.15(a)(3)(ii).

(i) *Effects of rescission if the parties are not in a court proceeding.* This paragraph applies if the creditor and consumer are not in a court proceeding.

(A) *Creditor's acknowledgment of receipt.* Within 20 calendar days after receipt of a consumer's notice of rescission, the creditor shall mail or deliver to the consumer a written acknowledgment of receipt of the consumer's notice, which shall include a written statement of whether the creditor will agree to cancel the transaction.

(B) *Creditor's written statement.* If the creditor agrees to cancel the transaction, the creditor's acknowledgment of receipt shall contain a written statement, which provides:

(*1*) As applicable, the amount of money or a description of the property that the creditor will accept as the consumer's tender;

(*2*) A reasonable date by which the consumer may tender the money or property described in paragraph (d)(2)(i)(B)(*1*); and

(*3*) That within 20 calendar days after receipt of the consumer's tender, the creditor will take whatever steps are necessary to terminate its security interest.

(C) *Consumer's response.* (*1*) *Tender of money.* This paragraph applies if the creditor disbursed money to the consumer. A consumer may respond by tendering to the creditor the money described in the written statement by the date stated in the written statement. Tender of money may be made at the creditor's designated place of business, or any reasonable location specified in the creditor's written statement.

(*2*) *Tender of property.* This paragraph applies if the creditor delivered property to the consumer. A consumer may respond by tendering to the creditor the property described in the written statement by the date stated in the written statement. Where this tender would be impracticable or inequitable, the consumer may tender the property's reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence.

(D) *Creditor's security interest.* Within 20 calendar days after receipt of the consumer's tender, the creditor shall take whatever steps are necessary to terminate its security interest.

(ii) *Effects of rescission in a court proceeding.* This paragraph applies if the creditor and consumer are in a court proceeding, and the consumer's right to rescind has not expired as provided in paragraph 15(a)(3)(ii) of this section.

(A) *Consumer's obligation.* (*1*) *Tender of money.* This paragraph applies if the creditor disbursed money to the consumer. After the creditor receives the consumer's notice of rescission, the consumer shall tender to the creditor the principal balance then owed less any amounts the consumer has given to the creditor or a third party in connection with the transaction. Tender of money may be made at the creditor's designated place of business, or other reasonable location.

(*2*) *Tender of property.* This paragraph applies if the creditor delivered property to the consumer. After the creditor receives the consumer's notice of rescission, the consumer shall tender the property to the creditor, or where this tender would be impracticable or inequitable, tender its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence.

(*3*) *Effect of non-possession.* If the creditor does not take possession of the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

(B) *Creditor's obligation.* Within 20 calendar days after receipt of the consumer's tender, the creditor shall take whatever steps are necessary to terminate its security interest. If the consumer tendered property, the creditor shall return to the consumer any amounts the consumer has given to the creditor or a third party in connection with the transaction.

(C) *Judicial modification.* The procedures outlined in paragraphs (d)(2)(ii)(A) and (B) of this section may be modified by a court.◄

(e) *Consumer's waiver of right to rescind.* 【(1)】 The consumer may modify or waive the right to rescind►, after delivery of the notice required by paragraph (b) of this section and the disclosures required by § 226.6,◄ if the consumer determines that the 【extension of credit is needed】► loan proceeds are needed during the rescission period◄ to meet a *bona fide* personal financial emergency. To modify or waive the right, 【the consumer】► each consumer entitled to rescind◄ shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the ►consumer's◄ signature【 of all the consumers entitled to rescind]. Printed forms for this purpose are prohibited[, except as provided in paragraph (e)(2) of this section].

[(2) The need of the consumer to obtain funds immediately shall be regarded as a *bona fide* personal financial emergency provided that the dwelling securing the extension of credit is located in an area declared during June through September 1993, pursuant to 42 U.S.C. 5170, to be a major disaster area because of severe storms and flooding in the Midwest.[36a] In this instance, creditors may use printed forms for the consumer to waive the right to rescind. This exemption to paragraph (e)(1) of this section shall expire one year from the date an area was declared a major disaster.

(3) The consumer's need to obtain funds immediately shall be regarded as a *bona fide* personal financial emergency provided that the dwelling securing the extension of credit is located in an area declared during June through September 1994 to be a major disaster area, pursuant to 42 U.S.C. 5170, because of severe storms and flooding in the South.[36b] In this instance, creditors may use printed forms for the consumer to waive the right to rescind. This exemption to paragraph (e)(1) of this section shall expire one year from the date an area was declared a major disaster.

(4) The consumer's need to obtain funds immediately shall be regarded as a *bona fide* personal financial emergency provided that the dwelling securing the extension of credit is located in an area declared during October 1994 to be a major disaster area, pursuant to 42 U.S.C. 5170, because of severe storms and flooding in Texas.[36c] In this instance, creditors may use printed forms for the consumer to waive the right to rescind. This exemption to paragraph (e)(1) of this section shall expire one year from the date an area was declared a major disaster.]

(f) *Exempt transactions.* The right to rescind does not apply to the following:

(1) A residential mortgage transaction.

(2) A credit plan in which a state agency is a creditor.

[[36a] A list of the affected areas will be maintained by the Board.]

[[36b] A list of the affected areas will be maintained and published by the Board. Such areas now include parts of Alabama, Florida, and Georgia.]

[[36c] A list of the affected areas will be maintained and published by the Board. Such areas now include the following counties in Texas: Angelina, Austin, Bastrop, Brazos, Brazoria, Burleson, Chambers, Fayette, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jackson, Jasper, Jefferson, Lee, Liberty, Madison, Matagorda, Montgomery, Nacagdoches, Orange, Polk, San Augustine, San Jacinto, Shelby, Trinity, Victoria, Washington, Waller, Walker, and Wharton.]

11. Section 226.16 is amended by revising paragraph (d)(6), and adding paragraphs (d)(7) through (13) to read as follows:

§ 226.16 Advertising.

* * * * *

(d) * * *

(6) *Promotional rates and payments.* (i) *Definitions.* The following definitions apply for purposes of paragraph (d)(6) of this section:

(A) *Promotional rate.* The term "promotional rate" means, in a variable-rate plan, any annual percentage rate that is not based on the index and margin that will be used to make rate adjustments under the plan, if that rate is less than a reasonably current annual percentage rate that would be in effect under the index and margin that will be used to make rate adjustments under the plan.

(B) *Promotional payment.* The term "promotional payment" means:

(*1*) For a variable-rate plan, any minimum payment applicable for a promotional period that [:

(*i*) Is not derived by applying the index and margin to the outstanding balance when such index and margin will be used to determine other minimum payments under the plan; and

(*ii*) Is] ►is◄ less than other minimum payments under the plan derived by applying a reasonably current index and margin that will be used to determine the amount of such payments, given an assumed balance.

(*2*) For a plan other than a variable-rate plan, any minimum payment applicable for a promotional period if that payment is less than other payments required under the plan given an assumed balance.

(C) *Promotional period.* A "promotional period" means a period of time, less than the full term of the loan, that the promotional rate or promotional payment may be applicable.

(ii) *Stating the promotional period and post-promotional rate or payments.* If any annual percentage rate that may be applied to a plan is a promotional rate, or if any payment applicable to a plan is a promotional payment, the following must be disclosed in any advertisement, other than television or radio advertisements, in a clear and conspicuous manner with equal prominence and in close proximity to each listing of the promotional rate or payment:

(A) The period of time during which the promotional rate or promotional payment will apply;

(B) In the case of a promotional rate, any annual percentage rate that will apply under the plan. If such rate is variable, the annual percentage rate must be disclosed in accordance with the accuracy standards in §§ 226.5b or 226.16(b)(1)(ii) as applicable; and

(C) In the case of a promotional payment, the amounts and time periods of any payments that will apply under the plan ►given the same assumed balance◄. In variable-rate transactions, payments that will be determined based on application of an index and margin shall be disclosed based on a reasonably current index and margin.

(iii) *Envelope excluded.* The requirements in paragraph (d)(6)(ii) of this section do not apply to an envelope in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically.

►(7) *Misleading advertising of "fixed" rates and payments.* An advertisement may not use the word "fixed" to refer to rates, payments, or the plan in an advertisement for a variable-rate plan or other plan where the payment may increase, unless:

(i) In the case of an advertisement solely for one or more variable-rate plans:

(A) The phrase "variable rate" appears in the advertisement before the first use of the word "fixed" and is at least as conspicuous as any use of the word "fixed" in the advertisement; and

(B) Each use of the word "fixed" to refer to a rate or payment is accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period;

(ii) In the case of an advertisement solely for non-variable-rate plans where the payment may increase, each use of the word "fixed" to refer to the payment is accompanied by an equally prominent and closely proximate statement of the time period for which the payment is fixed, and the fact that the payment may increase after that period; or

(iii) In the case of an advertisement for both variable-rate plans and non-variable-rate plans:

(A) The phrase "variable rate" appears in the advertisement with equal prominence to any use of the word "fixed;" and

(B) Each use of the word "fixed" to refer to a rate, payment, or the plan either refers solely to the plans for which the rate is fixed for the term of the plan and complies with paragraph (d)(7)(ii) of this section, if applicable, or, if it refers to the variable-rate plans, is accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period.

(8) *Misleading comparisons in advertisements.* An advertisement may not make any comparison between actual or hypothetical credit payments or rates and any payment or rate that will be available under the advertised plan for a period less than the full term of the plan, unless:

(i) *In general.* The advertisement includes a clear and conspicuous comparison of the actual or hypothetical payments or rates to any payments and rates that will apply under the advertised plan, in accordance with paragraph (d)(6)(ii) of this section; and

(ii) *Application to variable-rate transactions.* If the advertisement is for a variable-rate transaction, and the advertised payment or rate is based on the index and margin that will be used to make subsequent rate or payment adjustments over the term of the plan, the advertisement includes an equally prominent statement in close proximity to the payment or rate that the payment or rate is subject to adjustment and the time period when the first adjustment will occur.

(9) *Misrepresentations about government endorsement.* An advertisement may not make any statement in an advertisement that the plan offered is a "government loan program," "government-supported loan," or is otherwise endorsed or sponsored by any Federal, state, or local government entity, unless the advertisement is for a credit program that is, in fact, endorsed or sponsored by a Federal, state, or local government entity.

(10) *Misleading use of the current creditor's name.* An advertisement may not use the name of the consumer's current creditor in an advertisement that is not sent by or on behalf of the consumer's current creditor, unless the advertisement:

(i) Discloses with equal prominence the name of the creditor or other person making the advertisement; and

(ii) Includes a clear and conspicuous statement that the creditor or other person making the advertisement is not associated with, or acting on behalf of, the consumer's current creditor.

(11) *Misleading claims of debt elimination.* An advertisement may not make any misleading claim in an advertisement that the plan offered will eliminate debt or result in a waiver or forgiveness of a consumer's existing loan terms with, or obligations to, another creditor.

(12) *Misleading use of the term "counselor."* An advertisement may not use the term "counselor" in an advertisement to refer to a for-profit broker or creditor, its employees, or persons working for the broker or creditor that are involved in offering, originating or selling home-equity plans.

(13) *Misleading foreign-language advertisements.* An advertisement may not provide information about some trigger terms or required disclosures, such as a promotional rate or payment, only in a foreign language in an advertisement, but provide information about other trigger terms or required disclosures, such as information about the fully-indexed rate or fully amortizing payment, only in English in the same advertisement.◄

* * * * *

Subpart C—Closed-End Credit

12. Section 226.18 is amended by revising the introductory text and paragraph (n) to read as follows:

§ 226.18 Content of disclosures.

For each transaction, the creditor shall disclose the following information or comply with the following requirements, as applicable ►, except that for each transaction secured by real property or a dwelling, the creditor shall make the disclosures required by § 226.38◄:

* * * * *

(n) *Insurance* ►,◄ [*and*] *debt cancellation*►*, and debt suspension.*◄ [The items required by § 226.4(d) in order to exclude certain insurance premiums and debt cancellation fees from the finance charge.] ►The disclosures and requirements of §§ 226.4(d)(1)(i) through (d)(1)(iii) and (d)(3)(i) through (d)(3)(iii), as applicable, if the creditors offers optional credit insurance, debt cancellation coverage, or debt suspension coverage that is identified in § 226.4(b)(7) or (b)(10). For required credit insurance, debt cancellation coverage, or debt suspension coverage that is identified in § 226.4(b)(7) or (b)(10), the creditor shall provide the disclosures required in §§ 226.4(d)(1)(i) and (d)(3)(i), as applicable, except for §§ 226.4(d)(1)(i)(A), (B), (D)(5), (E) and (F).◄

* * * * *

13. Section 226.19 is amended by revising the section heading and paragraph (a), adding introductory text, reserving paragraph (d), and adding paragraph (e) to read as follows:

§ 226.19 [Certain mortgage and variable-rate transactions.]►Early disclosures and adjustable-rate disclosures for transactions secured by real property or a dwelling.

In connection with a closed-end transaction secured by real property or a dwelling, subject to paragraph (a)(4) of this section, the following requirements shall apply:◄

(a) *Mortgage transactions* [*subject to RESPA*]—(1)(i) *Time of* ►*good faith estimates of*◄ *disclosures.* [In a mortgage transaction subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*) that is secured by the consumer's dwelling, other than a home equity line of credit subject to § 226.5b or mortgage transaction subject to paragraph (a)(5) of this section, t]►T◄he creditor shall make good faith estimates of the disclosures required by [§ 226.18]►§ 226.38◄ and shall deliver or place them in the mail not later than the third business day after the creditor receives the consumer's written application.

(ii) *Imposition of fees.* Except as provided in paragraph (a)(1)(iii) of this section, neither a creditor nor any other person may impose a fee on a consumer in connection with the consumer's application for a mortgage transaction subject to paragraph (a)(1)(i) of this section before the consumer has received the disclosures required by paragraph (a)(1)(i) of this section. If the disclosures are mailed to the consumer ►or delivered to the consumer by means other than delivery in person◄, the consumer is considered to have received them three business days after they are mailed ►or delivered◄.

(iii) *Exception to fee restriction.* A creditor or other person may impose a fee for obtaining the consumer's credit history before the consumer has received the disclosures required by paragraph (a)(1)(i) of this section, provided the fee is *bona fide* and reasonable in amount. ►Notwithstanding paragraph (a)(1)(iv) of this section, a *bona fide* and reasonable fee paid for obtaining a consumer's creditor history need not be refundable.◄

►(iv) *Imposition of nonrefundable fees.* Neither a creditor nor any other person may impose a nonrefundable fee for three business days after a consumer receives the disclosures required by paragraph (a)(1)(i) of this section. A creditor or other person shall refund any fee paid by a consumer within three business days after receiving those disclosures, upon the consumer's request. This paragraph (a)(1)(iv) applies only to a refund request made by the consumer within three business days after receiving the early disclosures and only if the consumer decides not to enter into the transaction.

(v) *Counseling fee.* If housing or credit counseling is required by applicable law, a *bona fide* and reasonable charge imposed by a counselor or counseling agency for such counseling is not a "fee" for purposes of paragraph (a)(1)(ii) of this section and need not be refundable under paragraph (a)(1)(iv) of this section.◄

【(2) *Waiting periods for early disclosures and corrected disclosures.* (i)】►(2)(i) *Seven-business-day waiting period.*◄ The creditor shall deliver or place in the mail the good faith estimates required by paragraph (a)(1)(i) of this section not later than the seventh business day before consummation of the transaction.

►(ii) *Three-business-day waiting period.* After providing the disclosures required by paragraph (a)(1)(i) of this section, the creditor shall provide the disclosures required by § 226.38 before consummation. The consumer must receive the new disclosures no later than three business days before consummation. Only the disclosures required by §§ 226.38(c)(3)(i)(C), 226.38(c)(3)(ii)(C), 226.38(c)(6)(i) and 226.38(e)(5)(i) may be estimated disclosures.◄

ALTERNATIVE 1—PARAGRAPH (a)(2)(iii)

【(ii) If the annual percentage rate disclosed under paragraph (a)(1)(i) of this section becomes inaccurate, as defined in § 226.22, the creditor shall provide corrected disclosures with all changed terms.】►(iii) *Additional three-business-day waiting period.* If a subsequent event makes the disclosures required by paragraph (a)(2)(ii) inaccurate, as defined in § 226.22, the creditor shall provide corrected disclosures, subject to paragraph (a)(2)(iv) of this section.◄ The consumer must receive the corrected disclosures no later than three business days before consummation. ►Only the disclosures required by §§ 226.38(c)(3)(i)(C), 226.38(c)(3)(ii)(C), 226.38(c)(6)(i) and 226.38(e)(5)(i) may be estimated disclosures.◄ 【If the corrected disclosures are mailed to the consumer or delivered to the consumer by means other than delivery in person, the consumer is deemed to have received the corrected disclosures three business days after they are mailed or delivered.】

Alternative 2—paragraph (a)(2)(iii)

【(ii)】►(iii) *Additional three-business-day waiting period.*◄ If the annual percentage rate disclosed under paragraph 【(a)(1)(i)】►(a)(2)(ii)◄ of this section becomes inaccurate, as defined in § 226.22, ►or a transaction that was disclosed as a fixed-rate transaction becomes an adjustable-rate transaction,◄ the creditor shall provide corrected disclosures with all changed terms►, subject to paragraph (a)(2)(iv) of this section◄. The consumer must receive the corrected disclosures no later than three business days before consummation. ► Only the disclosures required by §§ 226.38(c)(3)(i)(C), 226.38(c)(3)(ii)(C), 226.38(c)(6)(i) and 226.38(e)(5)(i) may be estimated disclosures.◄ 【If the corrected disclosures are mailed to the consumer or delivered to the consumer by means other than delivery in person, the consumer is deemed to have received the corrected disclosures three business days after they are mailed or delivered.】

►(iv) *Annual percentage rate accuracy.* An annual percentage rate disclosed under paragraph (a)(2)(ii) or (a)(2)(iii) shall be considered accurate as provided by § 226.22, except that even if one of the following subsequent events makes the disclosed annual percentage rate inaccurate under § 226.22, the APR shall be considered accurate for purposes of paragraph (a)(2)(ii) and (a)(2)(iii) of this section:

(A) A decrease in the loan's annual percentage rate due to a discount the creditor gives the consumer to induce periodic payments by automated debit from a consumer's deposit or other account.

(B) A decrease in the loan's annual percentage rate due to a discount a title insurer gives the consumer on voluntary owners' title insurance.

(v) *Timing of receipt.* If the disclosures required by paragraph (a)(2)(ii) or paragraph (a)(2)(iii) of this section are mailed to the consumer or delivered by means other than delivery in person, the consumer is considered to have received the disclosures three business days after they are mailed or delivered.◄

(3) *Consumer's waiver of waiting period before consummation.* 【If the consumer determines that the extension of credit is needed to meet a *bona fide* personal financial emergency, the】►The◄ consumer may modify or waive the seven-business-day waiting period or 【the】►a◄ three-business-day waiting period required by paragraph (a)(2) of this section, after receiving the disclosures required by 【§ 226.18】►§ 226.38, if the consumer determines that the loan proceeds are needed before the waiting period ends to meet a *bona fide* personal financial emergency◄. To modify or waive a waiting period, 【the consumer】►each consumer primarily liable on the obligation◄ shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the ►consumer's◄ signature【 of all the consumers who are primarily liable on the legal obligation】. Printed forms for this purpose are prohibited.

【(4) *Notice.* Disclosures made pursuant to paragraph (a)(1) or paragraph (a)(2) of this section shall contain the following statement: "You are not required to complete this agreement merely because you have received these disclosures or signed a loan application." The disclosure required by this paragraph shall be grouped together with the disclosures required by paragraph (a)(1) or (a)(2) of this section.】

【(5)】►(4)◄ *Timeshare plans.* In a mortgage transaction 【subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*)】 that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53(D)):

(i) ►*Exemption.*◄ The requirements of paragraphs (a)(1) through 【(a)(4)】►(a)(3)◄ of this section do not apply;

(ii) ►*Time of disclosures for timeshare plans.*◄ The creditor shall make good faith estimates of the disclosures required by 【§ 226.18】 ►§ 226.38◄ before consummation, or shall deliver or place them in the mail not later than three business days after the creditor receives the consumer's written application, whichever is earlier; and

(iii) ►*Redisclosure for timeshare plans.*◄ If the annual percentage rate at the time of consummation varies from the annual percentage rate disclosed under paragraph (a)【(5)】►(4)◄(ii) of this section by more than 1/8 of 1 percentage point in a regular transaction or 1/4 of 1 percentage point in an irregular transaction, the creditor shall disclose all the changed terms no later than consummation or settlement.

* * * * *

►(d) [Reserved]

(e) *Exception for reverse mortgages.* The requirements of paragraphs (b) through (d) of this section do not apply to reverse mortgages, as defined in § 226.33(a).◄

14. Section 226.20 is amended by revising paragraphs (a) and (c) to read as follows:

§ 226.20 Subsequent disclosure requirements.

(a) ►*Modifications to terms by the same creditor.* (1) *Mortgages.* (i) A new transaction results and the creditor must provide new disclosures to the consumer if the same creditor and consumer modify an existing legal obligation secured by real property or a dwelling that was subject to this part by:

(A) Increasing the loan amount;

(B) Imposing a fee on the consumer in connection with the modification, whether or not the fee is reflected in any agreement between the parties;

(C) Changing the loan term;

(D) Changing the interest rate;

(E) Increasing the amount of the periodic payment;

(F) Adding an adjustable-rate feature or a feature listed in § 226.38(d)(1)(iii) or (d)(2); or

(G) Adding new collateral that is real property or a dwelling.

(ii) *Exceptions.* New disclosures shall not be required if the same creditor and consumer modify an existing legal obligation secured by real property or a dwelling that was subject to this part:

(A) As part of a court proceeding;

(B) In connection with the consumer's default or delinquency, unless there is an increase in the loan amount or interest rate, or a fee is imposed on the consumer in connection with the modification; or

(C) By decreasing the interest rate with no other modifications, except a decrease in the periodic payment amount, an extension of the loan term, or both, and no fee is imposed on the consumer in connection with the modification.

(iii) For purposes of paragraph (a)(1) of this section, the term "same creditor" means the current holder, or servicer acting on behalf of the current holder, of an existing legal obligation.◀

⟦(a)⟧▶(2)◀ *Refinancings* ▶*by the same creditor—Non-mortgage credit*◀. A refinancing occurs when an existing obligation that was subject to this subpart ▶and that is not secured by real property or a dwelling◀ is satisfied and replaced by a new obligation undertaken by the same consumer. A refinancing is a new transaction requiring new disclosures to the consumer.⟦ The new finance charge shall include any unearned portion of the old finance charge that is not credited to the existing obligation.⟧ The following shall not be treated as a refinancing:

⟦(1)⟧▶(i)◀ A renewal of a single payment obligation with no change in the original terms.

⟦(2)⟧▶(ii)◀ A reduction in the annual percentage rate with a corresponding change in the payment schedule.

⟦(3)⟧▶(iii)◀ An agreement involving a court proceeding.

⟦(4)⟧▶(iv)◀ A change in the payment schedule or a change in collateral requirements as a result of the consumer's default or delinquency, unless the rate is increased, or the new amount financed exceeds the unpaid balance plus earned finance charge and premiums for continuation of insurance of the types described in § 226.4(d).

⟦(5)⟧▶(v)◀ The renewal of optional insurance purchased by the consumer and added to an existing transaction, if disclosures relating to the initial purchase were provided as required by this subpart.

▶(3) *Unearned finance charge.* In connection with any new transaction under this subsection 226.20(a), the new finance charge must include any unearned portion of the old finance charge that is not credited to the existing obligation.◀

* * * * *

⟦(c) *Variable-rate adjustments.*[45c] An adjustment to the interest rate with or without a corresponding adjustment to the payment in a variable-rate mortgage subject to § 226.19(b) is an event requiring new disclosures to the consumer. At least once each year during which an interest rate adjustment is implemented without an accompanying payment change, and at least 25, but no more than 120, calendar days before a payment at a new level is due, the following disclosures, as applicable, must be delivered or placed in the mail:

(1) The current and prior interest rates.

(2) The index values upon which the current and prior interest rates are based.

(3) The extent to which the creditor has foregone any increase in the interest rate.

(4) The contractual effects of the adjustment, including the payment due after the adjustment is made, and a statement of the loan balance.

(5) The payment, if different from that referred to in paragraph (c)(4) of this section, that would be required to fully amortize the loan at the new interest rate over the remainder of the loan term.⟧

▶(c) *Rate adjustments.* If an adjustment to the interest rate of an adjustable rate mortgage is made, with or without a corresponding adjustment to the payment, disclosures required by this paragraph must be provided to the consumer. This paragraph applies only to adjustable rate mortgages subject to § 226.19(b), and to adjustments made based on the terms of the legal obligation between the parties, including adjustments made upon conversion to a fixed-rate transaction.

(1) *Timing of disclosures.* (i) *Payment change.* If an interest rate adjustment is accompanied by a payment change, the creditor shall deliver or place in the mail the disclosures required by paragraph (c)(2) of this section at least 60, but no more than 120, calendar days before a payment at a new level is due.

(ii) *No payment change.* At least once each year during which an interest rate adjustment is implemented without an accompanying payment change, the creditor shall deliver or place in the mail the disclosures required by paragraph (c)(3) of this section.

(2) *Content of payment change disclosures.* The creditor must provide the following information on the notice provided pursuant to paragraph (c)(1)(i) of this section, as applicable:

(i) A statement that changes are being made to the interest rate, the date such changes are effective, and a statement that more detailed information is available in the loan agreement(s).

(ii) A table containing the following disclosures—

(A) The current and new interest rates.

(B) If payments on the loan may be interest-only or negatively amortizing, the amount of the current and new payment allocated to pay principal, interest, and taxes and insurance in escrow, as applicable. The current payment allocation disclosed shall be based on the payment allocation in the last payment period during which the current interest rate applies. The new payment allocation disclosed shall be based on the payment allocation in the first payment period during which the new interest rate applies.

(C) The current and new payment and the due date for the new payment.

(iii) A description of the change in the index or formula and any application of previously foregone interest.

(iv) The extent to which the creditor has foregone any increase in the interest rate and the earliest date the creditor may apply foregone interest to future adjustments, subject to rate caps.

(v) Limits on interest rate or payment increases at each adjustment, if any, and the maximum interest rate or payment over the life of the loan.

(vi) A statement of whether or not part of the new payment will be allocated to pay the loan principal and a statement of the payment required to fully amortize the loan at the new interest rate over the remainder of the loan term or to fully amortize the loan without extending the loan term, if different from the new payment disclosed

⟦[45c] Information provided in accordance with variable-rate subsequent disclosure regulations of other Federal agencies may be subsituted for the disclosure required by paragraph (c) of this section.⟧

pursuant to paragraph (c)(2)(ii)(C) of this section.

(vii) A statement of the loan balance as of the date the interest rate change will become effective.

(3) *Content of annual interest rate notice.* The creditor shall provide the following information on the annual notice provided pursuant to paragraph (c)(1)(ii) of this section, as applicable:

(i) The specific time period covered by the disclosure, and a statement that the interest rate on the loan has changed during the past year without changing required payments.

(ii) The highest and lowest interest rates that applied during the period specified under paragraph (c)(3)(i) of this section.

(iii) Any foregone increase in the interest rate or application of previously foregone interest.

(iv) The maximum interest rate that may apply over the life of the loan.

(v) A statement of the loan balance as of the last day of the time period required to be disclosed by paragraph (c)(3)(i) of this section.

(4) *Additional information.* In addition to the disclosures provided under paragraph (c)(2) or (c)(3) of this section, the creditor shall provide the following information:

(i) If the creditor may impose a penalty if the obligation is prepaid in full, a statement of the circumstances under which and period in which the creditor may impose the penalty and the amount of the maximum penalty possible during the period between the date the creditor delivers or mails the disclosures required by this paragraph (c) and the last day the creditor may impose the penalty.

(ii) A telephone number the consumer may call to obtain additional information about the consumer's loan.

(iii) A telephone number and Internet Web site for housing counseling resources maintained by the Department of Housing and Urban Development.

(5) *Format of disclosures.* (i) The disclosures required by this paragraph (c) shall be provided in the form of tables with headings, content and format substantially similar to Form H–4(G) in Appendix H to this part, where an interest rate adjustment is accompanied by a payment change, or Form H–4(K) in Appendix H to this part, where a creditor provides an annual notice of interest rate adjustments without an accompanying payment change. The disclosures required by paragraph (c)(2) or (c)(3) of this section shall be grouped together with the disclosures required by paragraph (c)(4) of this section, and shall be in a prominent location.

(ii) The disclosures required by paragraph (c)(2)(i) or paragraph (c)(3)(i) of this section shall precede the other disclosures required by paragraph (c)(2) or (c)(3). The disclosures required by paragraph (c)(4) shall be located directly beneath the disclosures required by paragraph (c)(2) or (c)(3).

(iii) The disclosures required by paragraph (c)(2)(ii) shall be in the form of a table with headings, content, and format substantially similar to Form H–4(G) in Appendix H to this part. The disclosures required by paragraphs (c)(2)(iii) through (c)(2)(vii) of this section shall be located directly below the table required by paragraph (c)(2)(ii).◄

15. Section 226.22 is amended by revising paragraph (a) to read as follows:

§ 226.22 Determination of annual percentage rate.

(a) *Accuracy of annual percentage rate.* (1) ►*Actual annual percentage rate.* (i)◄ The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate, that relates the amount and timing of value received by the consumer to the amount and timing of payments made. The annual percentage rate shall be determined in accordance with either the actuarial method or the United States Rule method. Explanations, equations and instructions for determining the annual percentage rate in accordance with the actuarial method are set forth in appendix J to this regulation.[45d]

►(ii) An error in disclosure of the finance charge, for non-mortgage loans, or the interest and settlement charges, for mortgage loans, or in disclosure of the annual percentage rate is not a violation of this part if:

(A) The error resulted from a corresponding error in a calculation tool used in good faith by the creditor; and

(B) Upon discovery of the error, the creditor promptly discontinues use of that calculation tool for disclosure purposes.◄

(2) ►*Regular transaction.*◄ As a general rule, [the]►a disclosed◄ annual percentage rate shall be considered accurate if it is not more than ⅛ of 1 percentage point above or below the annual percentage rate determined in accordance with paragraph (a)(1) of this section.

(3) ►*Irregular transaction.*◄ In an irregular transaction, [the]►a disclosed◄ annual percentage rate shall be considered accurate if it is not more than ¼ of 1 percentage point above or below the annual percentage rate determined in accordance with paragraph (a)(1) of this section.[46] ►For purposes of this paragraph (a)(3), "irregular transaction" means a transaction that includes any of the following features: multiple advances, irregular payment periods, or irregular payment amounts, other than an irregular first period or an irregular first or final payment.

(i) The term "irregular transaction" includes the following:

(A) A construction loan for which advances are made as construction progresses;

(B) A transaction where payments vary to reflect the consumer's seasonal income;

(C) A transaction where payments vary due to changes in a premium for or termination of mortgage insurance; and

(D) A transaction with a graduated payment schedule where the contract commits the consumer to several series of payments in different amounts.

(ii) The term "irregular transaction" does not include a loan with a variable-rate feature that has regular payment periods.◄

(4) *Mortgage loans.* If the annual percentage rate disclosed in a transaction secured by real property or a dwelling varies from the actual rate determined in accordance with paragraph (a)(1) of this section, in addition to the tolerances applicable under paragraphs (a)(2) and (3) of this section, the disclosed annual percentage rate shall also be considered accurate if:

(i) The rate results from the disclosed [finance charge]►interest and settlement charges◄; and

(ii)(A) The disclosed [finance charge]►interest and settlement charges◄ would be considered accurate under [§ 226.18(d)(1)] ►§ 226.38(e)(5)(ii)◄; or

(B) For purposes of rescission, if the disclosed [finance charge]►interest and settlement charges◄ would be considered accurate under § 226.23►(a)(5)(ii)◄[(g) or (h), whichever applies].

(5) *Additional tolerance for mortgage loans.* In a transaction secured by real property or a dwelling, in addition to

[[45d] An error in disclosure of the annual percentage rate or finance charge shall not, in itself, be considered a violation of this regulation if: (1) The error resulted from a corresponding error in a calculation tool used in good faith by the creditor; and (2) upon discovery of the error, the creditor promptly discontinues use of that calculation tool for disclosure purposes and notifies the Board in writing of the error in the calculation tool.]

[46] ►[Reserved.]◄[For purposes of paragraph (a)(3) of this section, an irregular transaction is one that includes one or more of the following features: multiple advances, irregular payment periods, or irregular payment amounts (other than an irregular first period or an irregular first or final payment).]

the tolerances applicable under paragraphs (a)(2) and (3) of this section, if the disclosed [finance charge is]►interest and settlement charges are◄ calculated incorrectly but [is]►are◄ considered accurate under § 226.►38(e)(5)(ii)◄[18(d)(1)] or § 226.23►(a)(5)(ii)◄[(g) or (h)], the disclosed annual percentage rate shall be considered accurate:

(i) If the disclosed [finance charge is]►interest and settlement charges are◄ understated, and the disclosed annual percentage rate is also understated but it is closer to the actual annual percentage rate than the rate that would be considered accurate under paragraph (a)(4) of this section;

(ii) If the disclosed [finance charge is]►interest and settlement charges are◄ overstated, and the disclosed annual percentage rate is also overstated but it is closer to the actual annual percentage rate than the rate that would be considered accurate under paragraph (a)(4) of this section.

* * * * *

16. Section 226.23 is revised to read as follows:

§ 226.23 Right of rescission.

(a) *Consumer's right to rescind.* (1) ►*Coverage.*◄ In a credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind the transaction, except for transactions described in paragraph (f) of this section.[47] ►For purposes of this section, the addition to an existing obligation of a security interest in a consumer's principal dwelling is a transaction. The right of rescission applies only to the addition of the security interest and not the existing obligation.◄

(2) ►*Exercise of the right.* (i) *Provision of written notification.*◄ To exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail[, telegram] or other means of written communication. Notice is considered given when mailed, [when filed for telegraphic transmission] or, if sent by other means, when delivered to the [creditor's designated place of business] ► appropriate party identified in paragraph (a)(2)(ii) of this section within the applicable time period.

(ii) *Party the consumer shall notify.* (A) *During the three-business-day period following consummation.* To exercise the right to rescind during the three-business-day period following consummation of the transaction, the consumer shall mail or deliver written notice of the rescission to the creditor or the creditor's agent for receiving such notice, as designated on the notice provided by the creditor pursuant to paragraph (b) of this section. Where no designation is provided, mailing or delivering notice to the servicer, as defined in § 226.36(c)(3), constitutes delivery to the creditor.

(B) *After the three-business-day period following consummation.* To exercise an extended right to rescind after the three-business-day period following consummation, the consumer shall mail or deliver written notice of the rescission to the current owner of the debt obligation. A notice of rescission mailed or delivered to the servicer, as defined in § 226.36(c)(3), shall constitute delivery to the current owner.◄

(3) ►*Rescission period.* (i) *Three business days.*◄ The consumer [may exercise] ►has◄ the right to rescind until midnight [of] ►after◄ the third business day following consummation, delivery of the notice required by paragraph (b) of this section, or delivery of all material disclosures ►required by paragraph (a)(5) of this section◄,[48] whichever occurs last.

►(ii) *Unexpired right of rescission.* (A) *Up to three years.*◄ If the [required] notice ►required by paragraph (b) of this section◄ or material disclosures ►required by paragraph (a)(5) of this section◄ are not delivered, the right to rescind shall expire three years after consummation, upon transfer of all of the consumer's interest in the property, [or upon] sale of the property►, refinancing with a creditor other than the current holder, or paying off of the obligation◄, whichever occurs first.

►(B) *Extension in connection with certain administrative proceedings.*◄ In the case of certain administrative proceedings, the rescission period shall be extended in accordance with section 125(f) of the Act.

(4) ►*Joint Owners.*◄ When more than one consumer in a transaction has the right to rescind, the exercise of the right by one consumer shall be effective as to all consumers.

►(5)(i) *Definition of material disclosures.* For purposes of this section, the term *material disclosures* means the disclosures and limitations referred to in §§ 226.32(c) and (d) and 226.35(b)(2), and the following disclosures required under §§ 226.33 and 226.38:

(A) The loan amount disclosed under § 226.38(a)(1);

(B) The loan term disclosed under § 226.38(a)(2);

(C) The loan type disclosed under § 226.38(a)(3)(i) or the rate type under § 226.3(c)(6)(ii)(B);

(D) The loan features disclosed under § 226.38(a)(3)(ii);

(E) The total settlement charges disclosed under § 226.38(a)(4) or the total fees under § 226.33(c)(7)(i)(A);

(F) The prepayment penalty disclosed under § 226.38(a)(5) or § 226.33(c)(7)(iii);

(G) The annual percentage rate disclosed under § 226.38(b)(1) or § 226.33(c)(6)(ii)(A);

(H) The interest rate and payment summary disclosed under § 226.38(c) or the interest rate under § 226.33(c)(7)(ii)(C)(*1*); and

(I) The interest and settlement charges disclosed under § 226.38(e)(5)(ii) or § 226.33(c)(14)(ii).

(ii) *Tolerances for accuracy of the interest and settlement charges.* (A) *In general.* Except as provided in paragraphs (a)(5)(ii)(B) and (a)(5)(ii)(C) of this section, the interest and settlement charges and the annual percentage rate shall be considered accurate for purposes of this section if the disclosed interest and settlement charges:

(1) Are understated by no more than ½ of 1 percent of the face amount of the note or $100, whichever is greater; or

(2) Are greater than the amount required to be disclosed.

(B) *Special tolerance for a refinancing with no new advance.* In a refinancing of a residential mortgage transaction with a creditor other than the current holder of the debt obligation (other than a transaction covered by § 226.32), if there is no new advance and no consolidation of existing loans, the interest and settlement charges and the annual percentage rate shall be considered accurate for purposes of this section if the disclosed interest and settlement charges:

(1) Are understated by no more than 1 percent of the face amount of the note or $100, whichever is greater; or

(2) Are greater than the amount required to be disclosed.

(C) *Special tolerance for foreclosures.* After the initiation of foreclosure on the

[47] ►[Reserved.]◄[For purposes of this section, the addition to an existing obligation of a security interest in a consumer's principal dwelling is a transaction. The right of rescission applies only to the addition of the security interest and not the existing obligation. The creditor shall deliver the notice required by paragraph (b) of this section but need not deliver new material disclosures. Delivery of the required notice shall begin the rescission period.]

[48] ►[Reserved.]◄[The term "material disclosures" means the required disclosures of the annual percentage rate, the finance charge, the amount financed, the total payments, the payment schedule, and the disclosures and limitations referred to in § 226.32 (c) and (d) and 226.35(b)(2).]

consumer's principal dwelling that secures the credit obligation, the interest and settlement charges and the annual percentage rate shall be considered accurate for purposes of this section if the disclosed interest and settlement charges:

(*1*) Are understated by no more than $35; or

(*2*) Are greater than the amount required to be disclosed.

(iii) *Tolerances for accuracy of the loan amount.* (A) *In general.* Except as provided in paragraph (a)(5)(B) of this section and § 226.32(c)(5), the loan amount shall be considered accurate if the disclosed loan amount:

(*1*) Is understated by no more than ½ of 1 percent of the face amount of the note or $100, whichever is greater; or

(*2*) Is greater than the amount required to be disclosed.

(B) *Special tolerance for a refinancing with no new advance.* Except as provided in § 226.32(c)(5), in a refinancing of a residential mortgage transaction with a creditor other than the current holder of the debt obligation, if there is no new advance and no consolidation of existing loans, the loan amount shall be considered accurate for purposes of this section if the disclosed loan amount:

(*1*) Is understated by no more than 1 percent of the face amount of the note or $100, whichever is greater; or

(*2*) Is greater than the amount required to be disclosed.

(iv) *Tolerances for accuracy of the total settlement charges, the prepayment penalty, and the payment summary.* The total settlement charges, the prepayment penalty, and the payment summary shall be considered accurate for purposes of this section if each of the disclosed amounts:

(A) Is understated by no more than $100; or

(B) Is greater than the amount required to be disclosed.

(b)**[**(1)**]** *Notice of right to rescind.* ►(1) *Who receives notice.*◄ In a transaction subject to rescission, a creditor shall deliver **[**two copies of**]** the notice of the right to rescind to each consumer entitled to rescind►.◄ **[**(one copy to each if the notice is delivered in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act). The notice shall be on a separate document that identifies the transaction and shall clearly and conspicuously disclose the following:

(i) The retention or acquisition of a security interest in the consumer's principal dwelling.

(ii) The consumer's right to rescind the transaction.

(iii) How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.

(iv) The effects of rescission, as described in paragraph (d) of this section.

(v) The date the rescission period expires.**]**

(2) **[***Proper form***]**►*Format*◄ *of notice.* **[**To satisfy the disclosure requirements of paragraph (b)(1) of this section, the creditor shall provide the appropriate model form in Appendix H of this part or a substantially similar notice.**]** ►(i) *Grouped and segregated.* The disclosures required under paragraph (b)(3) of this section and the optional disclosures permitted under paragraph (b)(4) of this section shall appear on the front side of a one-page document, separate from all other unrelated material. The disclosures required by paragraph (b)(3)(i)–(vi) of this section shall appear grouped together in the notice. The disclosures required by paragraph (b)(3)(vii) of this section shall appear grouped together and shall be segregated from all other information in the notice. The notice shall not contain any other information not directly related to the disclosures required under paragraph (b)(3) of this section.

(ii) *Specific format.* The title of the notice shall appear at the top of the notice. The disclosures required by paragraph (b)(3)(i)–(vi) of this section shall appear beneath the title and be in the form of a table. If the creditor chooses to place in the notice one or both of the optional disclosures described in paragraph (b)(4) of this section, the text shall follow the disclosures required by paragraph (b)(3)(i)–(vi) of this section, but appear before the segregated disclosures required by paragraph (b)(3)(vii) of this section. If both statements described in paragraph (b)(4) of this section are inserted, the statement described in paragraph (b)(4)(i) of this section shall appear before the statement described in paragraph (b)(4)(ii) of this section. The disclosures required by paragraph (b)(3) of this section and any optional disclosures permitted under paragraph (b)(4) of this section must be given in a minimum 10-point font. If the creditor chooses to insert an acknowledgement as described in paragraph (b)(4)(ii) of this section, the acknowledgement must be disclosed in a format substantially similar to the format used in Model Form H–8(A) or H–9 in Appendix H to this part.

(3) *Required content of notice.* The creditor shall clearly and conspicuously disclose the following information in the notice:

(i) *Security interest.* A statement that the consumer could lose his or her home if the consumer does not repay the money owed under the loan that is secured by the home.

(ii) *Right to cancel.* A statement that the consumer has the right under Federal law to cancel the loan on or before the stated date, together with a statement that Federal law prohibits the creditor from making any funds available to the consumer until after the stated date.

(iii) *Fees.* A statement that, if the consumer cancels, the creditor will not charge the consumer a cancellation fee and will refund any fees the consumer paid to obtain the loan.

(iv) *New advance of money with the same creditor under paragraph (f)(2) of this section.* If there is a new transaction with the same creditor and a new advance of money as described in paragraph (f)(2) of this section, a statement that if the consumer cancels the new transaction, all of the terms of the previous loan will still apply, the consumer will still owe the creditor the previous balance, and the consumer could lose his or her home if the consumer does not repay the previous loan.

(v) *How to cancel.* The name and postal address for regular mail of the creditor or its agent and a statement that the consumer may cancel by submitting the form located at the bottom of the notice to the address provided.

(vi) *Deadline to cancel.* The calendar date on which the three-business-day rescission period expires, together with a statement that the right to cancel the loan may extend beyond this date and in that case the consumer must submit the form located at the bottom of the notice to either the current owner of the loan or the person to whom the consumer sends his or her payments. If the creditor cannot provide an accurate calendar date on which the three-business-day rescission period expires, the creditor must provide the calendar date on which it reasonably and in good faith expects the three-business-day period for rescission to expire. If the creditor provides a date in the notice that gives the consumer a longer period within which to rescind than the actual period for rescission, the notice shall be deemed to comply with this paragraph, as long as the creditor permits the consumer to rescind through the end of the date in the notice. If the creditor provides a date in the notice that gives the consumer a shorter period within which to rescind than the actual period for rescission, the creditor shall be deemed to comply with the requirement in this paragraph if the creditor notifies the consumer that the deadline in the first notice of the right of rescission has changed and provides a second notice to the consumer stating that the consumer's right to rescind expires on a calendar date which is three business days from the date the consumer receives the second notice.

(vii) *Form for consumer's exercise of right.* A form that the consumer may use to exercise the right of rescission, which includes spaces for entry of the consumer's name and property address. At a creditor's option, the creditor may pre-print on the form the consumer's name, property address and loan number, but may not request or require the consumer to provide the loan number.

(4) *Optional content of notice.* (i) *Exercise of right by joint owners.* At a creditor's option, a statement that joint owners may have the right to rescind and that a rescission by one owner is effective for all owners.

(ii) *Acknowledgement of receipt.* At a creditor's option, a statement the consumer may use to acknowledge receipt of the notice.

(5) *Time of providing notice.* (i) *In general.* Except as provided in paragraph (b)(5)(ii) of this section, the notice required by paragraph (b) of this section shall be provided before consummation of the transaction.

(ii) *Addition of a security interest to an existing obligation.* In the case of the addition to an existing obligation of a security interest as described in paragraph (a)(1) of this section, the notice required by paragraph (b) of this section shall be provided before the addition of the security interest to the existing obligation.

(6) *Proper form of notice.* A creditor satisfies the disclosure requirements of paragraph (b)(3) of this section if it provides the appropriate model form in Appendix H of this part, or a substantially similar notice, which is properly completed with the disclosures required by paragraph (b)(3) of this section.◀

(c) *Delay of creditor's performance.* Unless a consumer waives the right of rescission under paragraph (e) of this section, no money shall be disbursed other than in escrow, no services shall be performed and no materials delivered until the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded.

(d)▶(1)◀ *Effects of rescission* ▶*prior to the creditor disbursing funds.* This paragraph applies if the creditor has not, directly or indirectly through a third party, disbursed money or delivered property, and the consumer's right to rescind has not expired.◀

【(1)】▶(i) *Effect of consumer's notice of rescission.*◀ When a consumer 【rescinds a transaction】▶provides a notice of rescission to a creditor ◀, the security interest giving rise to the right of rescission becomes void and the consumer shall not be liable for any amount, including any finance charge.

【(2)】▶(ii) *Creditor's obligations.*◀ Within 20 calendar days after receipt of a【notice of rescission, the creditor shall return any money or property that has been given to anyone】▶consumer's notice of rescission, the creditor shall return to the consumer any money that the consumer has given to the creditor or a third party◀ in connection with the transaction and shall take 【any action】▶whatever steps are◀ necessary to 【reflect the termination of the】▶terminate its◀ security interest.

【(3) If the creditor has delivered any money or property, the consumer may retain possession until the creditor has met its obligation under paragraph (d)(2) of this section. When the creditor has complied with that paragraph, the consumer shall tender the money or property to the creditor or, where the latter would be impracticable or inequitable, tender its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. Tender of money must be made at the creditor's designated place of business. If the creditor does not take possession of the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

(4) The procedures outlined in paragraphs (d)(2) and (3) of this section may be modified by court order.】

▶(2) *Effects of rescission after the creditor disburses funds.* This paragraph applies if the creditor has, directly or indirectly through a third party, disbursed money or delivered property, and the consumer's right to rescind has not expired under § 226.23(a)(3)(ii).

(i) *Effects of rescission if the parties are not in a court proceeding.* This paragraph applies if the creditor and consumer are not in a court proceeding.

(A) *Creditor's acknowledgment of receipt.* Within 20 calendar days after receipt of a consumer's notice of rescission, the creditor shall mail or deliver to the consumer a written acknowledgment of receipt of the consumer's notice, which shall include a written statement of whether the creditor will agree to cancel the transaction.

(B) *Creditor's written statement.* If the creditor agrees to cancel the transaction, the creditor's acknowledgment of receipt shall contain a written statement, which provides:

(*1*) As applicable, the amount of money or a description of the property that the creditor will accept as the consumer's tender;

(*2*) A reasonable date by which the consumer may tender the money or property described in paragraph (d)(2)(i)(B)(*1*); and

(*3*) That within 20 calendar days after receipt of the consumer's tender, the creditor will take whatever steps are necessary to terminate its security interest.

(C) *Consumer's response.* (*1*) *Tender of money.* This paragraph applies if the creditor disbursed money to the consumer. A consumer may respond by tendering to the creditor the money described in the written statement by the date stated in the written statement. Tender of money may be made at the creditor's designated place of business, or any reasonable location specified in the creditor's written statement.

(*2*) *Tender of property.* This paragraph applies if the creditor delivered property to the consumer. A consumer may respond by tendering to the creditor the property described in the written statement by the date stated in the written statement. Where this tender would be impracticable or inequitable, the consumer may tender the property's reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence.

(D) *Creditor's security interest.* Within 20 calendar days after receipt of the consumer's tender, the creditor shall take whatever steps are necessary to terminate its security interest.

(ii) *Effects of rescission in a court proceeding.* This paragraph applies if the creditor and consumer are in a court proceeding, and the consumer's right to rescind has not expired as provided in paragraph 23(a)(3)(ii) of this section.

(A) *Consumer's obligation.* (*1*) *Tender of money.* This paragraph applies if the creditor disbursed money to the consumer. After the creditor receives the consumer's notice of rescission, the consumer shall tender to the creditor the principal balance then owed less any amounts the consumer has given to the creditor or a third party in connection with the transaction. Tender of money may be made at the creditor's designated place of business, or other reasonable location.

(*2*) *Tender of property.* This paragraph applies if the creditor delivered property to the consumer. After the creditor receives the consumer's notice of rescission, the consumer shall tender the property to the creditor, or where this tender would be impracticable or inequitable, tender its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence.

(*3*) *Effect of non-possession.* If the creditor does not take possession of the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

(B) *Creditor's obligation.* Within 20 calendar days after receipt of the consumer's tender, the creditor shall take whatever steps are necessary to terminate its security interest. If the consumer tendered property, the creditor shall return to the consumer any amounts the consumer has given to the creditor or a third party in connection with the transaction.

(C) *Judicial modification.* The procedures outlined in paragraphs (d)(2)(ii)(A) and (B) of this section may be modified by a court.◄

(e) *Consumer's waiver of right to rescind.* ⟦(1)⟧ The consumer may modify or waive the right to rescind►, after delivery of the notice required by paragraph (b) of this section and the disclosures required by §§ 226.32(c) and 226.38, as applicable,◄ if the consumer determines that the ⟦extension of credit is needed⟧►loan proceeds are needed during the rescission period◄ to meet a *bona fide* personal financial emergency. To modify or waive the right, ⟦the consumer⟧►each consumer entitled to rescind◄ shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the ►consumer's◄ signature⟦of all the consumers entitled to rescind⟧. Printed forms for this purpose are prohibited⟦, except as provided in paragraph (e)(2) of this section⟧.

⟦(2) The need of the consumer to obtain funds immediately shall be regarded as a *bona fide* personal financial emergency provided that the dwelling securing the extension of credit is located in an area declared during June through September 1993, pursuant to 42 U.S.C. 5170, to be a major disaster area because of severe storms and flooding in the Midwest.[48a] In this instance, creditors may use printed forms for the consumer to waive the right to rescind. This exemption to paragraph (e)(1) of this section shall expire one year from the date an area was declared a major disaster.

(3) The consumer's need to obtain funds immediately shall be regarded as a *bona fide* personal financial emergency provided that the dwelling securing the extension of credit is located in an area declared during June through September 1994 to be a major disaster area, pursuant to 42 U.S.C. 5170, because of severe storms and flooding in the South.[48b] In this instance, creditors may use printed forms for the consumer to waive the right to rescind. This exemption to paragraph (e)(1) of this section shall expire one year from the date an area was declared a major disaster.

(4) The consumer's need to obtain funds immediately shall be regarded as a *bona fide* personal financial emergency provided that the dwelling securing the extension of credit is located in an area declared during October 1994 to be a major disaster area, pursuant to 42 U.S.C. 5170, because of severe storms and flooding in Texas.[48c] In this instance, creditors may use printed forms for the consumer to waive the right to rescind. This exemption to paragraph (e)(1) of this section shall expire one year from the date an area was declared a major disaster.⟧

(f) *Exempt transactions.* The right to rescind does not apply to the following:

(1) A residential mortgage transaction.

(2) A ⟦refinancing or consolidation⟧ ► new transaction under § 226.20(a)(1)◄ by the same creditor of an extension of credit already secured by the consumer's principal dwelling ►, except to the extent of any new advance of money.

(i) For purposes of this paragraph, the term *same creditor* means the original creditor that is also the current holder of the debt obligation. The original creditor is the creditor to whom the written agreement was initially made payable. In a merger, consolidation or acquisition, the successor institution is considered the original creditor.

(ii) For purposes of this paragraph, the term *new advance* means the amount by which the new loan amount exceeds the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the new transaction. If the new transaction with the same creditor involves a new advance of money, the new transaction is rescindable only to the extent of the new advance.◄ ⟦The right of rescission shall apply, however, to the extent the new amount financed exceeds the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing or consolidation.⟧

(3) A transaction in which a state agency is a creditor.

(4) An advance, other than an initial advance, in a series of advances or in a series of single-payment obligations that is treated as a single transaction under § 226.17(c)(6), if the notice required by paragraph (b) of this section and all material disclosures have been given to the consumer.

(5) A renewal of optional ►credit◄ insurance premiums►, debt cancellation coverage or debt suspension coverage, provided that the disclosures relating to the initial purchase were provided as required under § 226.38(h)◄ ⟦that is not considered a refinancing under § 226.20(a)(5)⟧.

⟦(g) *Tolerances for accuracy*—(1) *One-half of 1 percent tolerance.* Except as provided in paragraphs (g)(2) and (h)(2) of this section, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(i) is understated by no more than ½ of 1 percent of the face amount of the note or $100, whichever is greater; or

(ii) is greater than the amount required to be disclosed.

(2) *One percent tolerance.* In a refinancing of a residential mortgage transaction with a new creditor (other than a transaction covered by § 226.32), if there is no new advance and no consolidation of existing loans, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(i) is understated by no more than 1 percent of the face amount of the note or $100, whichever is greater; or

(ii) is greater than the amount required to be disclosed.⟧

⟦(h)⟧►(g)◄ *Special rules for foreclosures.* ⟦(1) *Right to rescind.*⟧ After the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation, the

⟦[48a] A list of the affected areas will be maintained by the Board.⟧

⟦[48b] A list of the affected areas will be maintained and published by the Board. Such areas now include parts of Alabama, Florida, and Georgia.⟧

⟦[48c] A list of the affected areas will be maintained and published by the Board. Such areas now include the following counties in Texas: Angelina, Austin, Bastrop, Brazos, Brazoria, Burleson, Chambers, Fayette, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jackson, Jasper, Jefferson, Lee, Liberty, Madison, Matagorda, Montgomery, Nacagdoches, Orange, Polk, San Augustine, San Jacinto, Shelby, Trinity, Victoria, Washington, Waller, Walker, and Wharton.⟧

consumer shall have the right to rescind the transaction if:

[(i)]►(1)◄ A mortgage broker fee that should have been included in the [finance charge]► interest and settlement charges◄ was not included; or

[(ii)]►(2)◄ The creditor did not provide the properly completed appropriate model form in appendix H of this part, or a substantially similar notice of rescission.

[(2) *Tolerances for disclosures.* After the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(i) Is understated by no more than $35; or

(ii) Is greater than the amount required to be disclosed.]

17. Section 226.24 is amended by revising paragraph (f)(3)(i) to read as follows:

§ 226.24 Advertising.

* * * * *

(f) * * *

(3) *Disclosure of payments*—(i) *In general.* [In addition to the requirements of paragraph (c) of this section, if] ►If◄ an advertisement for credit secured by a dwelling states the amount of any payment, the advertisement shall disclose in a clear and conspicuous manner:

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

18. Section 226.31 is amended by revising paragraphs (b), (c)(1)(iii), (c)(2), and (d)(2) to read as follows:

§ 226.31 General rules.

* * * * *

(b) *Form of disclosures.* The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E–Sign Act) (15 U.S.C. 7001 *et seq.*). ►The disclosures required by § 226.33(b) may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E–Sign Act in the circumstances set forth in that section.◄

(c) * * *

(1) * * *

(iii) *Consumer's waiver of waiting period before consummation.* [The consumer may, after receiving the disclosures required by paragraph (c)(1) of this section, modify or waive the three-day waiting period between delivery of those disclosures and consummation, if the consumer determines that the extension of credit is needed]►The consumer may modify or waive the three-day waiting period between when the consumer receives the disclosures required by paragraph (c)(1) of this section and consummation, after receiving those disclosures, if the consumer determines that the loan proceeds are needed before the waiting period ends◄ to meet a *bona fide* personal financial emergency. To modify or waive the right, [the consumer]►each consumer primarily liable on the legal obligation◄ shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the ►consumer's◄ signature[of all the consumers entitled to the waiting period]. Printed forms for this purpose are prohibited[, except when creditors are permitted to use printed forms pursuant to § 226.23(e)(2)].

(2) *Disclosures for reverse mortgages.* The creditor shall furnish the disclosures required by § 226.33 ►as specified in paragraph (d) of that section◄[at least three business days prior to:

(i) Consummation of a closed-end credit transaction; or

(ii) The first transaction under an open-end credit plan].

* * * * *

(d) * * *

(2) *Estimates.* ►Except as otherwise required by § 226.19(a)(2), i◄ [I]f any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided, and shall state clearly that the disclosure is an estimate.

* * * * *

19. Section 226.32 is amended by revising paragraphs (a)(2)(ii) and (b)(1)(i) to read as follows:

§ 226.32 Requirements for certain closed-end home mortgages.

(a) * * *

(2) * * *

(ii) A ►nonrecourse◄ reverse mortgage [transaction] subject to § 226.33.

* * * * *

(b) * * *

(1) * * *

(i) All items [required to be disclosed under] ►included in the finance charge pursuant to◄ § 226.4[(a) and 226.4(b)], except►—

(A)◄ Interest or the time-price differential; ►and

(B) For purposes of this paragraph (b)(1)(i), § 226.4(g) does not apply;◄

* * * * *

20. Section 226.33 is revised to read as follows:

§ 226.33 Requirements for reverse mortgages.

(a) *Definition.* For purposes of this subpart, *reverse mortgage* [*transaction*] means a [nonrecourse] consumer credit obligation in which:

(1) A mortgage, deed of trust, or equivalent consensual security interest securing one or more advances is created in the consumer's principal dwelling; and

(2) Any principal, interest, or shared appreciation or equity is due and payable (other than in the case of default) only after:

(i) The consumer dies;

(ii) The dwelling is transferred; or

(iii) The consumer ceases to occupy the dwelling as a principal dwelling.

►(b) *Reverse mortgage document provided on or with the application.* (1) *In general.* Except as provided in paragraph (b)(2) of this section, the reverse mortgage document "Key Questions to Ask about Reverse Mortgage Loans" published by the Board, or a substantially similar document, shall be provided prominently on or with an application form at the time the application form is provided to the consumer or before the consumer pays a nonrefundable fee (except a bona fide and reasonable fee imposed by a counselor or a counseling agency for reverse mortgage counseling required by applicable law), whichever is earlier.

(2) *Application made by telephone or through an intermediary.* If the creditor receives the consumer's application through an intermediary agent or broker or by telephone, the creditor satisfies the requirements of paragraph (b)(1) of this section if the creditor delivers the document or places it in the mail not later than three business days after the creditor receives the consumer's application; or before consummation or account opening, whichever is earlier.

(3) *Electronic disclosure.* For an application that is accessed by the consumer in electronic form, the document required by paragraph (b)(1) of this section must be provided in a timely manner and may be provided to

the consumer in electronic form on or with the application.

(4) *Duties of third parties.* Persons other than the creditor who provide applications to consumers for open-end reverse mortgages must comply with paragraphs (b)(1) and (b)(3) of this section, except that these third parties are not required to deliver or mail the document required by paragraph (b)(1) of this section for telephone applications as discussed in paragraph (b)(2) of this section.◄

[(b)]►(c)◄ *Content of disclosures* ►*for reverse mortgages*◄. In addition to other disclosures required by this part, in a reverse mortgage [transaction] the creditor shall provide the following disclosures in a form substantially similar to [the model form] ►Forms K–1, K–2, or K–3◄ found in [paragraph (d) of] appendix K of this part:

(1) *Notice.* A statement that the consumer is not obligated to complete the reverse mortgage [transaction] merely because the consumer has received the disclosures required by this section or has signed an application for a reverse mortgage loan. ►If the creditor provides space for the consumer's signature, a statement that a signature by the consumer only confirms receipt of the disclosure statement.◄

(2) ►*Identification information.* (i) The identity of the creditor.

(ii) The date the disclosure was prepared.

(iii) The loan originator's unique identifier, as defined by Sections 1503(3) and (12) of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 U.S.C. 5102(3) and (12).◄[*Total annual loan cost rates.* A good-faith projection of the total cost of the credit, determined in accordance with paragraph (c) of this section and expressed as a table of "total annual loan cost rates," using that term, in accordance with appendix K of this part.]

(3) *Itemization of pertinent information.* [An itemization of loan terms, charges, the age of the youngest borrower] ►The name, address, account number, and age of each borrower◄, and the appraised property value.

(4) ►*Information about the reverse mortgage.* (i) A statement that the consumer has applied for a reverse mortgage secured by his dwelling that does not have to be repaid while the consumer remains in the home.

(ii) A description of the types of payments which the consumer may receive, such as an initial advance, a monthly or other periodic advance, or through discretionary cash advances in which the consumer controls the timing of advances, if more than one type of payment is available.

(iii) A statement that the consumer will retain title to the home and must pay any property charges such as taxes and insurance and must maintain the property.

(iv) As applicable, a statement that the consumer will have access to the loan funds and will continue to receive payments even if the loan's principal balance exceeds the value of the home, provided that the consumer remains in the home.

(v) A description of the events that may cause the reverse mortgage to become due and payable, and a statement that the consumer must repay the loan, including interest and fees, once such an event occurs.◄[*Explanation of table.* An explanation of the table of total annual loan cost rates as provided in the model form found in paragraph (d) of appendix K of this part.]

►(5) *Payment of loan funds.* (i) An itemization of the types of payments the creditor will make to the consumer including, as applicable:

(A) The amount of any initial advance at consummation or for a HELOC, after the consumer becomes obligated on the plan, and a statement that the funds will be paid to the consumer after the consumer accepts the reverse mortgage, labeled "Initial Advance".

(B) The amount of any monthly or other regular periodic payment of funds to the consumer and a statement that the funds will be paid each month (or other applicable period) while the consumer remains in the home, labeled "Monthly Advance" (or other applicable period).

(C) Any amount made available to the consumer as discretionary cash advances, the timing of which the consumer controls, and a statement that the funds will be available to the consumer at any time while the consumer remains in the home, labeled "Line of Credit."

(ii) If the consumer may choose the types of payments by which to receive loan funds, and the consumer has not selected a payment option at the time the disclosures are provided, the creditor shall disclose the amount the consumer may receive in the following manner:

(A) As the maximum amount the consumer could receive under paragraph (c)(5)(i)(C) of this section along with a statement that the consumer may also choose to take some or all of the funds in an initial advance or periodic payment as described in paragraphs (c)(5)(i)(A) or (c)(5)(i)(B) of this section, if applicable.

(B) If the creditor does not provide the consumer with the option to receive funds in the manner described in paragraph (c)(5)(i)(C) of this section, as the maximum amount the consumer may receive as an initial advance under paragraph (c)(5)(i)(A) of this section along with a statement that the consumer may choose to take some or all of the funds in the form of a periodic payment as described in paragraph (c)(5)(i)(B) of this section, if applicable.

(iii) A statement that the consumer may change the types of payments received, if applicable.

(6) *Annual percentage rate.* (i) *Open-end annual percentage rate.* For an open-end reverse mortgage, each periodic interest rate applicable to the transaction that may be used to compute the finance charge on an outstanding balance, expressed as an annual percentage rate (as determined by § 226.14(b)). The annual percentage rates disclosed pursuant to this paragraph shall be in at least 16-point type, except for the following: Any minimum or maximum annual percentage rates that may apply; and any rate changes set forth in the initial agreement that would not generally apply after the expiration of an introductory rate, such as the loss of an employee preferred rate when an employee ceases employment.

(A) *Disclosures for variable-rate plans.* (*1*) If a rate disclosed under paragraph (c)(6)(i) of this section is a variable rate, the following disclosures, as applicable:

(*i*) The fact that the annual percentage rate may change due to the variable-rate feature, using the term "variable rate" in underlined text as shown in the applicable tables found in Samples K–4, or K–5 in Appendix K of this part.

(*ii*) An explanation of how the annual percentage rate will be determined. Except as provided in paragraph (c)(6)(i)(A)(*1*)(*vi*) of this section, in providing this disclosure, a creditor must only identify the type of index used and the amount of any margin.

(*iii*) The frequency of changes in the annual percentage rate.

(*iv*) Any rules relating to changes in the index value and the annual percentage rate.

(*v*) A statement of any limitations on changes in the annual percentage rate, including the minimum and maximum annual percentage rate that may be imposed. If no annual or other periodic limitations apply to changes in the annual percentage rate, a statement that no annual limitation exists.

(*vi*) The lowest and highest value of the index and margin in the past 15 years.

(*2*) A variable rate is accurate if it is a rate as of a specified date and the rate was in effect within the last 30 days before the disclosures are provided.

(B) *Introductory initial rate.* If the initial rate is an introductory rate, the creditor must disclose the rate that would otherwise apply pursuant to paragraph (c)(6)(i) of this section. Where the rate is fixed, the creditor must disclose the rate that will apply after the introductory rate expires. Where the rate is variable, the creditor must disclose the rate based on the applicable index or formula. A creditor must disclose in the table described in paragraph (d)(4) of this section the introductory rate along with the rate that would otherwise apply to the plan, and use the term "introductory" or "intro" in immediate proximity to the introductory rate. The creditor must also disclose the time period during which the introductory rate will remain in effect.

(ii) *Closed-end annual percentage rate.* (A) The "annual percentage rate," using that term (as determined by § 226.22), and the following description: "overall cost of this loan including interest and settlement charges."

(B) *Rate type.* (*1*) If the annual percentage rate may increase after consummation, a statement that the rate is an "adjustable rate" using that term.

(*2*) If the interest rate will change after consummation, and the rates and periods in which they will apply are known, a statement that the rate is a "step rate" using that term.

(*3*) If the rate is not an adjustable rate or a step rate, a statement that the rate is a "fixed rate" using that term.

(C) *Rate calculation and rate change limits.* If the annual percentage rate may increase after consummation:

(*1*) A statement labeled "Rate Calculation" that described the method used to calculate the interest rate and the frequency of interest rate adjustments. If the interest rate that applies at consummation is not based on the index and margin that will be used to make later interest rate adjustments, the statement must include the time period when the initial interest rate expires.

(*2*) Any limitations on the increase in the interest rate together with a statement of the maximum rate that may apply, labeled "Rate Change Limits."

(*3*) The lowest and highest value of the index and margin in the past 15 years.

(iii) *Statement about interest accrual.* A statement that interest charges will be added to the loan balance each month (or other applicable period) and collected when the loan is due.

(7) *Fees and transaction requirements.* (i) *Fees imposed by the creditor and third parties to consummate the transaction or open the plan.* (A) The total of all one-time fees imposed by the creditor and any third parties to open the plan or consummate the transaction, stated as a dollar amount. If the exact total of one-time fees for account opening is not known at the time the open-end early disclosures required by paragraph (d)(1) of this section are delivered or mailed, a creditor must provide the highest total of one-time account opening fees possible for the plan terms with a indication that the one-time account opening costs may be "up to" that amount.

(B) An itemization of all one-time fees imposed by the creditor and any third parties to open the plan or consummate the transaction, stated as a dollar amount, and when such fees are payable. If the dollar amount of an itemized fee is not known at the time the disclosures under paragraph (d)(1) of this section are delivered or mailed, a creditor must provide a range for such fee.

(C) A creditor shall not disclose the amount of any property insurance premiums under this paragraph, even if the creditor requires property insurance.

(ii) *Fees imposed by the creditor for availability of the reverse mortgage.* (A) Any monthly or other periodic fees that may be imposed by the creditor for the availability of the reverse mortgage, including any fee based on account activity or inactivity; how frequently the fee will be imposed; and the annualized amount of the fee. A creditor must not disclose the amount of any property insurance premiums under this paragraph, even if the creditor requires property insurance.

(B) All costs and charges to the consumer that may be imposed by the creditor on a regular periodic basis as part of the reverse mortgage, such as a servicing fee or mortgage-insurance premium.

(C) The label "Monthly Interest Charges" along with:

(*1*) For a closed-end reverse mortgage, the interest rate applicable to the loan and, if the rate is variable, a statement that the rate can change.

(*2*) For an open-end reverse mortgage, the annual percentage rate applicable to the plan and, if the rate is variable, a statement that the rate can change.

(iii) *Fees imposed by the creditor for early termination of the reverse mortgage.* Any fee that may be imposed by the creditor if a consumer terminates the reverse mortgage, or prepays the obligation in full, prior to its scheduled maturity.

(iv) *Statement about other fees.* (A) For the early open-end disclosure required by paragraph (d)(1) of this section, a statement that other fees may apply, if applicable. As applicable, either:

(*1*) A statement that the consumer may receive, upon request, additional information about fees applicable to the plan, or

(*2*) If the additional information about fees is provided with the table described in paragraph (d)(4)(i) of this section, a reference to the location of the information.

(B) For the open-end account-opening disclosures required by paragraph (d)(2) of this section and the closed-end disclosures required by paragraph (d)(3) of this section, a statement that other fees may apply and that information about other fees is included in the disclosures or agreement, as applicable.

(v) *Transaction requirements.* Any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum draw requirements.

(8) *Loan balance growth.* (i) *Itemization.* An itemization of the loan balance expressed as a dollar amount. The creditor shall base the itemization on:

(A) The initial interest rate in effect at the time the disclosures are provided.

(B) The assumption that the consumer does not make any repayments during the term of the reverse mortgage.

(C) The payment type(s) selected by the consumer as disclosed in paragraph (c)(5) of this section. If the consumer has elected to receive an initial advance, a periodic payment, or some combination of the two which accounts for fifty percent or more of the principal loan amount available to the consumer, the creditor shall assume that the consumer takes no further advances. In all other cases, including where the consumer has not selected a payment type, the creditor shall assume that the entire principal loan amount is advanced at closing or, in the case of an open-end credit transaction, at the time the consumer becomes obligated on the plan.

(D) If the creditor is entitled by contract to any shared appreciation or shared equity, the assumption that the dwelling's value increases by 4 percent per year. In all other cases, the assumption that the dwelling's value does not change.

(E) If the creditor and consumer have not agreed on whether any closing or account-opening and other transaction costs will be financed by the creditor or paid by the consumer, the assumption that all such costs will be financed by the creditor.

(ii) *Content.* The itemization shall contain only the following information for each of the assumed loan periods of one year, five years, and ten years:

(A) The sum of all advances to and for the benefit of the consumer, including payments that the consumer will receive from an annuity that the consumer purchases along with the reverse mortgage;

(B) The sum of all costs and charges owed by the consumer, including the costs of any annuity the consumer purchases along with the reverse mortgage; and

(C) The total amount the consumer would be required to repay, including any shared appreciation or equity in the dwelling that the creditor is entitled by contract to receive and any limitations on the consumer's liability (such as nonrecourse limits and equity-conservation agreements).

(iii) *Explanation.* An explanation of the table required by paragraph (c)(8)(v) of this section including:

(A) A statement that the table is based on payment type(s) selected by the consumer as disclosed in paragraph (c)(5) of this section and, if applicable, a statement that the disclosure assumes no further advances are taken.

(B) For a reverse mortgage under an open-end credit plan, the annual percentage rate in effect at the time the disclosures are provided and a statement that the table is based on the assumption that the annual percentage rate does not change.

(C) For a closed-end reverse mortgage, the interest rate in effect at the time the disclosures are provided and a statement that the table is based on the assumption that the interest rate does not change.

(iv) *Shared appreciation disclosure.* If the creditor is entitled by contract to any shared appreciation or equity, a statement under the heading, "Shared Appreciation" or "Shared Equity," that the reverse mortgage includes such an agreement and a description that this means the lender will be entitled to a specified percent of any gain the consumer makes when the consumer sells or refinances the home. The creditor must also disclose a numeric example of the amount of shared appreciation or equity the creditor would be entitled to based on a hypothetical $100,000 appreciation in the home's value.

(v) *Format.* The information in paragraph (c)(8)(ii) shall be in the form of a table with headings, content and format substantially similar to Forms K–1, K–2, or K–3 in Appendix K to this part. That table shall contain only the information required in paragraph (c)(8)(iii). The information in paragraph (c)(8)(iv) shall be in the form of a table with headings, content and format substantially similar to Model Clause K–7 in Appendix K to this part.

(9) *Statements about repayment options.* (i) A statement that once the loan becomes due and payable the consumer or the consumer's heirs may pay the loan balance in full and keep the home, or sell the home and use the proceeds to pay off the loan.

(ii) For a nonrecourse transaction a statement that:

(A) If the home sells for less than the consumer owes, the consumer will not be required to pay the difference.

(B) If the home sells for more than the consumer owes, the difference will be provided to the consumer or the consumer's heirs. If the reverse mortgage includes a shared equity or shared appreciation feature, a statement that the creditor will deduct any shared appreciation or equity before paying the remaining funds to the consumer or consumer's heirs.

(iii) For a transaction that allows recourse against the borrower, a statement that the consumer or the consumer's estate will be required to repay the entire amount of the loan, even if the home sells for less than the consumer owes.

(10) *Statements about risks.* (i) A statement that the reverse mortgage will be secured by the consumer's home.

(ii) As applicable, a statement that the creditor may:

(A) Foreclose on the home and require that the consumer leave the home;

(B) Stop making periodic payments to the consumer;

(C) Prohibit additional extensions of credit or reduce the credit limit, if applicable;

(D) Terminate the reverse mortgage and require payment of the outstanding balance in full in a single payment and impose fees upon termination; and

(E) Implement changes in the reverse mortgage.

(iii) A statement of the following conditions under which the creditor may take the actions in paragraph (c)(10)(ii) of this section, including as applicable:

(A) The consumer's failure to maintain the collateral.

(B) The consumer's ceasing to use the dwelling as the consumer's principal residence and a statement of any residency time period that will be used to determine whether the dwelling is the consumer's principal residence (such as if the consumer does not reside in the dwelling for 12 consecutive months).

(C) The consumer's failure to pay property taxes or maintain homeowner's insurance.

(D) The consumer's failure to meet any other obligations.

(11) *Additional information and Web site.* A statement that if the consumer does not understand any disclosure required by this section the consumer should ask questions; a statement that the consumer may obtain additional information at the Web site of the Federal Reserve Board; and a reference to that Web site.

(12) *Additional early disclosures for open-end reverse mortgages.* The following disclosures must be provided with the disclosures required by paragraph (d)(1) of this section:

(i) *Refund of fees under § 226.5b(e).* A statement that the consumer may receive a refund of all fees paid, if the consumer notifies the creditor within three business days of receiving the disclosures given pursuant to this paragraph (d) of this section that he does not want to open the plan.

(ii) *Refund of fees under § 226.40(b).* A statement that the consumer may receive a refund of all fees paid, if the consumer notifies the creditor within three business days of receiving the counseling required by § 226.40(b) that he does not want to open the plan.

(iii) *Changes to disclosed terms.* A statement that, if a disclosed term changes (other than a change due to fluctuations in the index in a variable-rate plan) prior to opening the plan and the consumer elects not to open the plan, the consumer may receive a refund of all fees paid.

(iv) *Statement about refundability of fees.* (A) Identification of any disclosed term that is subject to change prior to opening the plan.

(B) A statement that the consumer may be entitled to a refund of all fees paid if the consumer decides not to open the plan; and

(C) A cross reference to the "Fees" section in the table described in paragraph (d)(4)(i) of this section.

(13) *Additional disclosures before the first transaction under an open-end reverse mortgage.* The following disclosures must be provided with the disclosures required by paragraph (d)(2) of this section:

(i) *Transaction charges.* Any transaction charge imposed by the creditor for use of the reverse mortgage.

(ii) *Fees for failure to comply with transaction limitations.* Any fee imposed by the creditor for a consumer's failure to comply with:

(A) Any limitations on the number of extensions of credit or the amount of credit that may be obtained during any time period.

(B) Any minimum draw requirements.

(iii) *Billing error rights reference.* A statement that information about consumers' right to dispute transactions is included in the account-opening disclosures.

(iv) *Statement about confirming terms.* A statement that the consumer should confirm that the terms in the disclosure statement are the same terms for which the consumer applied.

(14) *Additional disclosures for closed-end reverse mortgages.* The following disclosures must be provided with the disclosures required by paragraph (d)(3) of this section, grouped together under the subheading "Total Payments," using that term:

(i) *Total payments.* The total payments amount, calculated based on the number and amount of scheduled payments in accordance with the requirements of § 226.18(g), together with a statement that the total payments is calculated on the assumption that market rates do not change, if applicable, and a statement of the estimated loan term.

(ii) *Interest and settlement charges.* The *interest and settlement charges,* using that term, calculated as the finance charge in accordance with the requirements of § 226.4 and expressed as a dollar figure, together with a brief statement that the interest and settlement charges amount represents part of the total payments amount. The disclosed interest and settlement charges, and other disclosures affected by the disclosed interest and settlement charges (including the amount financed and annual percentage rate), shall be treated as accurate if the amount disclosed as the interest and settlement charges—

(A) Is understated by no more than $100;

(B) Is greater than the amount required to be disclosed.

(iii) *Amount financed.* The *amount financed,* using that term and expressed as a dollar figure, together with a brief statement that the interest and settlement charges and the amount financed are used to calculate the annual percentage rate.

(15) *Disclosures provided outside the table.* The following disclosures must be provided outside the table required by paragraph (d)(4) of this section:

(i) For closed-end reverse mortgages, the disclosures required by § 226.38(j), as applicable.

(ii) For open-end reverse mortgages, the information required by § 226.6(a)(3), (a)(4), and (a)(5), as applicable.

(16) *Assumptions for closed-End disclosures.* In a closed-end reverse mortgage, the creditor must apply the following rules, as applicable, in making the disclosures required by paragraph (c)(14) of this section. The creditor's use of these rules does not, by itself, make the disclosures estimates:

(i) If the reverse mortgage has a specified period for disbursements but repayment is due only upon the occurrence of a future event such as the death of the consumer, the creditor must assume that disbursements will be made until they are scheduled to end. The creditor must assume repayment will occur when disbursements end or within a period following the final disbursement which is not longer than the regular interval between disbursements.

This assumption should be used even though repayment may occur before or after the disbursements are scheduled to end.

(ii) If the reverse mortgage has neither a specified period for disbursements nor a specified repayment date and these terms will be determined solely by reference to future events including the consumer's death, the creditor may assume that the disbursements will end upon the consumer's death (which may be estimated by using actuarial tables, for example) and that repayment will be required at the same time (or within a period following the date of the final disbursement which is not longer than the regular interval for disbursements). Alternatively, the creditor may base the disclosures upon another future event it estimates will be most likely to occur first. If terms will be determined by reference to future events which do not include the consumer's death, the creditor must base the disclosures upon the occurrence of the event estimated to be most likely to occur first.

(iii) In making the disclosures, the creditor must assume that all disbursements and accrued interest will be paid by the consumer. For example, if the note has a nonrecourse provision providing that the consumer is not obligated for an amount greater than the value of the house, the creditor must nonetheless assume that the full amount to be disbursed will be repaid.◄

[(c) *Projected total cost of credit.* The projected total cost of credit shall reflect the following factors, as applicable:

(1) *Costs to consumer.* All costs and charges to the consumer, including the costs of any annuity the consumer purchases as part of the reverse mortgage transaction.

(2) *Payments to consumer.* All advances to and for the benefit of the consumer, including annuity payments that the consumer will receive from an annuity that the consumer purchases as part of the reverse mortgage transaction.

(3) *Additional creditor compensation.* Any shared appreciation or equity in the dwelling that the creditor is entitled by contract to receive.

(4) *Limitations on consumer liability.* Any limitation on the consumer's liability (such as nonrecourse limits and equity conservation agreements).

(5) *Assumed annual appreciation rates.* Each of the following assumed annual appreciation rates for the dwelling:

(i) 0 percent.

(ii) 4 percent.

(iii) 8 percent.

(6) *Assumed loan period.* (i) Each of the following assumed loan periods, as provided in appendix L of this part:

(A) Two years.

(B) The actuarial life expectancy of the consumer to become obligated on the reverse mortgage transaction (as of that consumer's most recent birthday). In the case of multiple consumers, the period shall be the actuarial life expectancy of the youngest consumer (as of that consumer's most recent birthday).

(C) The actuarial life expectancy specified by paragraph (c)(6)(i)(B) of this section, multiplied by a factor of 1.4 and rounded to the nearest full year.

(ii) At the creditor's option, the actuarial life expectancy specified by paragraph (c)(6)(i)(B) of this section, multiplied by a factor of .5 and rounded to the nearest full year.]

►(d) *Special disclosure requirements for reverse mortgages.* (1) *Timing of early open-end reverse mortgage disclosures.* In a reverse mortgage structured as an open-end credit plan, the creditor shall deliver or mail the disclosures required under paragraph (c) of this section, as applicable, not later than—

(i) Three business days following receipt of a consumer's application by the creditor; or

(ii) Three business days before the first transaction under the plan, if earlier.

(2) *Timing of open-end reverse mortgage account-opening disclosures.* In a reverse mortgage structured as an open-end credit plan, at least three business days before the first transaction under the plan a creditor must provide the disclosures specified in paragraph (c) of this section, as applicable.

(3) *Timing of closed-end reverse mortgage disclosures.* In a closed-end reverse mortgage, the creditor shall

make the disclosures required by paragraph (c) of this section, as applicable, in accordance with the rules in § 226.19(a).

(4) *Form of disclosures; tabular format.* (i) The disclosures required by paragraphs (c)(3) through (c)(10), (c)(12)(i), (c)(12)(ii), (c)(12)(iii), (c)(13)(i), (c)(13)(ii), and (c)(14) of this section generally shall be in the form of a table with headings, content, and format substantially similar to any of the applicable tables found in K–1, K–2, or K–3 in Appendix K to this part.

(ii) The table described in paragraph (d)(4)(i) of this section shall contain only the information required or permitted by paragraphs (c)(3) through (c)(10), (c)(12)(i), (c)(12)(ii), (c)(12)(iii), (c)(13)(i), (c)(13)(ii), and (c)(14).

(iii) Disclosures required by paragraph (c)(2) of this section must be placed directly above the table described in paragraph (d)(4)(i) of this section, in a format substantially similar to any of the applicable tables found in K–1, K–2, or K–3 in Appendix K to this part.

(iv) The disclosures required by paragraphs (c)(1), (c)(11), (c)(12), (c)(12)(iv), (c)(13)(iii), and (c)(13)(iv) of this section must be disclosed directly below the table described in paragraph (d)(4)(i) of this section, in a format substantially similar to any of the applicable tables found in K–1, K–2, or K–3 in Appendix K to this part.

(v) Other information may be presented with the table described in paragraph (d)(4)(i) of this section, provided that such information appears outside of the required table.

(vi) The following disclosures must be disclosed in bold text:

(A) Disclosures required by paragraphs (c)(1), (c)(6)(iii), (c)(8)(ii)(C), (c)(11), (c)(12)(iv)(A), and (c)(12)(iv)(B) of this section.

(B) Any dollar amount required to be disclosed under paragraph (c)(5)(i) of this section.

(C) Any annual percentage rates required to be disclosed under paragraph (c)(6) of this section. For closed-end reverse mortgages, the annual percentage rate must be more conspicuous than the other required disclosures and in at least 16 point font.

(D) Total account opening fees required to be disclosed under paragraph (c)(7)(i) of this section.

(E) Any percentage or dollar amount required to be disclosed under paragraphs (c)(7)(ii), (c)(7)(iii), (c)(7)(v), (c)(13)(i), and (c)(13)(ii) of this section except the annualized amount of any periodic fee disclosed pursuant to paragraph (c)(7)(ii) of this section.

(5) *Disclosures based on a percentage.* Except for disclosing fees under paragraph (c)(7)(i) of this section, if the amount of any fee required to be disclosed under paragraph (c) of this section or the amount of any transaction requirement required to be disclosed under paragraph (c)(7)(v) of this section is determined on the basis of a percentage of another amount, the percentage used and the amount against which the percentage is applied may be disclosed instead of the amount of the fee or transaction amount, as applicable.

(e) *Reverse mortgage advertising.*

(1) *Scope.* The requirements of paragraph (e) of this section apply to any advertisement for a reverse mortgage, including promotional materials accompanying applications.

(2) *Clear and conspicuous standard.* Disclosures required by paragraph (e) of this section shall be made clearly and conspicuously.

(3) *Need to repay loan.* If an advertisement states that a reverse mortgage is a "government benefit" or otherwise is aid provided by any Federal, state, or local government entity, each such statement shall be accompanied by an equally prominent and closely proximate statement of the fact that a reverse mortgage is a loan that must be repaid.

(4) *Events that end loan term.* If an advertisement states that a reverse mortgage provides payments "for life" or that a consumer need not repay a reverse mortgage "during your lifetime" or otherwise states that a reverse mortgage will continue throughout a consumer's lifetime, each such statement shall be accompanied by an equally prominent and closely proximate statement that a reverse mortgage will end sooner in certain circumstances, including, as applicable, if the consumer—

(A) Sells the dwelling; or

(B) Lives somewhere other than the dwelling for a longer period than allowed by the loan agreement.

(5) *Risk of foreclosure.* If an advertisement states that a consumer "cannot lose", or that there is "no risk" to, a consumer's dwelling with a reverse mortgage or otherwise states that foreclosure cannot occur with a reverse mortgage, each such statement shall be accompanied by an equally prominent and closely proximate statement that foreclosure may occur in some circumstances, including, as applicable, if the consumer—

(A) Lives somewhere other than the dwelling longer than allowed by the loan agreement; or

(B) Does not pay property taxes or insurance premiums.

(6) *Amount owed.* If an advertisement states that with a reverse mortgage a consumer or a consumer's heirs or estate "cannot owe" or will "never repay" an amount greater than, or otherwise states that repayment is limited to, the value of the consumer's dwelling, each such statement shall be accompanied by an equally prominent and closely proximate statement of the fact that—

(A) To retain the dwelling when the reverse mortgage becomes due, the consumer or the consumer's heirs or estate must pay the entire loan balance; and

(B) The balance may be greater than the value of the consumer's dwelling.

(7) *Payments for taxes and insurance.* If an advertisement states that payments are not required for a reverse mortgage, each such statement shall be accompanied by an equally prominent and closely proximate statement of the fact that a consumer must pay taxes and insurance premiums, if applicable.

(8) *Government fee limitation.* If an advertisement states that a Federal, state, or local government limits or regulates fees or other costs for a reverse mortgage, each such statement shall be accompanied by an equally prominent and closely proximate statement of the fact that costs may vary among creditors and loan types and that less expensive options may be available.

(9) *Eligibility for government programs.* If an advertisement states that a reverse mortgage does not affect a consumer's benefits from or eligibility for a Federal, state, or local government program, each such statement shall be accompanied by an equally prominent and closely proximate statement of the fact that a reverse mortgage may affect benefits from or eligibility for some government programs such as Supplemental Security Income and Medicaid.

(10) *Credit counseling information.* If an advertisement for a reverse mortgage contains a reference to housing or credit counseling, the advertisement shall disclose a telephone number and Internet Web site for housing counseling resources maintained by the U.S. Department of Housing and Urban Development that is at least as conspicuous as any such reference in the advertisement.◄

* * * * *

21. Section 226.35 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 226.35 Prohibited acts or practices in connection with higher-priced mortgage loans.

(a) *Higher-priced mortgage loans*—(1) For purposes of this section, a higher-priced mortgage loan is a consumer credit transaction secured by the consumer's principal dwelling with ►a transaction coverage rate◄ [an annual percentage rate] that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points for loans secured by a first lien on a dwelling, or by 3.5 or more percentage points for loans secured by a subordinate lien on a dwelling.

(2) ►*Definitions.* (i) "Transaction coverage rate" means the rate used to determine whether a transaction is a higher-priced mortgage loan subject to this section. The transaction coverage rate is determined in accordance with the applicable rules of this part for the calculation of the annual percentage rate for a closed-end transaction, except that the prepaid finance charge for purposes of calculating the transaction coverage rate includes only prepaid finance charges that will be retained by the creditor, its affiliate, or a mortgage broker.

(ii)◄ "Average prime offer rate" means an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. The Board publishes average prime offer rates for a broad range of types of transactions in a table updated at least weekly as well as the methodology the Board uses to derive these rates.

* * * * *

22. Section 226.38, as proposed to be added on August 26, 2009 (74 FR 43232), is further amended by revising the introductory text and paragraph (h), and by adding paragraph (k) to read as follows:

►§ 226.38 Content of disclosures for closed-end mortgages.

In connection with a closed-end transaction secured by real property or a dwelling, the creditor shall disclose the following information, ►or comply with the following requirements, as applicable◄:

* * * * *

(h) [*Credit*] ►*Required or voluntary credit*◄ *insurance,* [*and*] *debt cancellation* ►*coverage, or*◄ [*and*] *debt suspension coverage.* ►The disclosures and requirements of § 226.4(d)(1)(i) through (d)(1)(iii) and (d)(3)(i) through (d)(3)(iii), as applicable if the creditor offers optional or required credit insurance, debt cancellation coverage, or debt suspension coverage that is identified in § 226.4(b)(7) or (b)(10). For required credit insurance, debt cancellation coverage, or debt suspension coverage that is identified in § 226.4(b)(7) or (b)(10), the creditor shall provide the disclosures required in § 226.4(d)(1)(i) and (d)(3)(i), as applicable, except for § 226.4(d)(1)(i)(A) and (B).◄ [The disclosures specified in paragraphs (h)(1)–(10) of this section, which shall be grouped together and substantially similar in headings, content and format to Model Clauses H–17(A) and H–17(C) in Appendix H to this part.

(1)(i) If the product is optional, the term "OPTIONAL COSTS," in capitalized and bold letters, along with the name of the program, in bold letters; or

(ii) If the product is required, the name of the program, in bold letters.

(2) If the product is optional, the term "STOP," in capitalized and bold letters, along with a statement that the consumer does not have to buy the product to get the loan. The term "not" shall be in bold text and underlined.

(3) A statement that if the consumer already has insurance, then the policy or coverage may not provide the consumer with additional benefits.

(4) A statement that other types of insurance may give the consumer similar benefits and are often less expensive.

(5) (i) If the eligibility restrictions are limited to age and/or employment, a statement that based on the creditor's review of the consumer's age and/or employment status at this time, the consumer would be eligible to receive benefits.

(ii) If there are other eligibility restrictions in addition to age and/or employment, a statement that based on the creditor's review of the consumer's age and/or employment status at this time, the consumer may be eligible to receive benefits.

(6) If there are other eligibility restrictions in addition to age and/or employment, such as pre-existing health conditions, a statement that the consumer may not qualify to receive any benefits because of other eligibility restrictions.

(7) If the product is a debt suspension agreement, a statement that the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension.

(8) A statement that the consumer may obtain additional information about the product at the Web site of the Federal Reserve Board, and reference to that Web site.

(9)(i) If the product is optional, a statement of the consumer's request to purchase or enroll in the optional product and a statement of the cost of the product expressed as a dollar amount per month or per year, as applicable, together with the loan amount and the term of the product in years; or

(ii) If the product is required, a statement that the product is required, along with a statement of the cost of the product expressed as a dollar amount per month or per year, as applicable, together with the loan amount and the term of the product in years.

(iii) The cost, month or year, loan amount, and term of the product shall be underlined.

(10) A designation for the signature of the consumer and the date of the signing.]

* * * * *

►(k) *Reverse mortgages.* Reverse mortgages under § 226.33(a) that are structured as closed-end credit are subject to the requirements in § 226.33(c) and (d), not the requirements in § 226.38(a) through (i).◄

23. A new § 226.40 is added to Subpart E to read as follows:

►§ 226.40 Prohibited acts or practices in connection with reverse mortgages.

(a) *Requiring the purchase of other financial or insurance products.* Neither a creditor nor a loan originator, as defined in § 226.36(a)(1), may require a consumer to purchase any financial or insurance product as a condition of obtaining a reverse mortgage subject to § 226.33.

(1) *Financial or insurance products.* For purposes of this § 226.40(a), the term "financial or insurance product" does not include—

(i) A transaction account or savings deposit, as defined in Regulation D, 12 CFR part 204, that is established to disburse proceeds of the reverse mortgage; and

(ii) Any product or service customarily required to protect the creditor's interest in the collateral or otherwise mitigate the creditor's risk of loss.

(2) *Safe harbor.* A creditor or loan originator is deemed to have complied with this § 226.40(a) if:

(i) The consumer receives the document required by § 226.33(b), or a substantially similar document, on or with the application; and

(ii) For a reverse mortgage subject to § 226.5b, the account is opened, or, for any other reverse mortgage, the loan is consummated, at least 10 calendar days before the consumer becomes obligated to purchase any other financial or insurance product from—

(A) The creditor;

(B) The loan originator;

(C) An affiliate of either the creditor or loan originator; or

(D) Any other party, if the creditor, loan originator, or an affiliate of either will receive compensation for the purchase.

(b) *Counseling.* (1) *Counseling required.* Neither a creditor nor any other person may originate a reverse mortgage subject to § 226.33 before the consumer has obtained counseling from a counselor or counseling agency that meets the counselor qualification standards established by the Secretary of the U.S. Department of Housing and Urban Development pursuant to 12 U.S.C. 1715z–20(f), or substantially similar qualification standards.

(2) *Nonrefundable fees prohibited.* (i) Neither a creditor nor any other person may impose a nonrefundable fee in connection with a reverse mortgage subject to § 226.33 until three business days after the consumer, as defined in paragraph (b)(7) of this section, has obtained the counseling required in paragraph (b)(1) of this section.

(ii) A bona fide and reasonable charge for counseling required under paragraph (b)(1) of this section imposed by a counselor or counseling agency meeting the counselor qualifications described in paragraph (b)(1) of this section is not a "fee" for purposes of paragraph (b)(2)(i) of this section.

(3) *Content of counseling.* The counseling required under paragraph (b)(1) of this section must include information regarding reverse mortgages and their suitability to the consumer's financial needs and circumstances.

(4) *Timing of counseling.* For each reverse mortgage subject to § 226.33, the counseling required under paragraph (b)(1) of this section must be completed no earlier than 180 days prior to the creditor's receipt of the consumer's application for the reverse mortgage.

(5) *Type of counseling.* The counseling required under paragraph (b)(1) of this section must occur face-to-face or by telephone.

(6) *Independence of counselor.* (i) *Counselor compensation.* Neither a creditor nor any other person involved in originating a reverse mortgage subject to § 226.33 may compensate a counselor or counseling agency for providing counseling required under paragraph (b)(1) of this section in relation to a particular reverse mortgage transaction.

(ii) *Steering.* Neither a creditor nor any other person involved in originating a reverse mortgage subject to § 226.33 may steer or otherwise direct a consumer to choose a particular counselor or counseling agency for the counseling required under paragraph (b)(1) of this section. A creditor or other person involved in originating a reverse mortgage is deemed to have complied with this § 226.40(b)(6)(ii) if the creditor or other person provides to the consumer a list of at least five counselors or counseling agencies meeting the requirements specified in paragraph (b)(1) of this section.

(7) *Definition of "consumer."* Except for purposes of paragraph (b)(2) of this section, the term "consumer" in paragraph (b) of this section includes all persons who, at the time of origination of a reverse mortgage subject to § 226.33, will be shown as owners on the property deed of the dwelling that will secure the applicable reverse mortgage. For purposes of this § 226.40(b)(2), the term "consumer" includes only persons who will be obligors on the applicable reverse mortgage.◀

24. A new § 226.41 is added to Subpart E to read as follows:

▶§ 226.41 Servicer's response to borrower's request for information.

Upon receipt of a written request from the consumer for the identity of or the contact information for the current owner of the debt obligation and/or the current master servicer of the debt obligation, the current servicer of the debt obligation shall provide to the consumer, within a reasonable time and to the best of its knowledge, the name, address, and telephone number of the owner of the debt obligation and the master servicer of the debt obligation. For purposes of this section, the term "servicer" has the same meaning as in § 226.36(c)(3).◀

25. Appendix G to Part 226 is amended by:

A. Removing the entry for G–5, adding entries for G–5(A), G–5(B), and G–5(C), revising the entries for G–16(A) and G–16(B), and adding entries for G–16(C) and G–16(D) in the table of contents at the beginning of the appendix;

B. Removing G–5 and removing and reserving G–6, G–7, G–8, and G–9;

C. Removing G–16(A) and G–16(B); and

D. Adding new Model Forms G–5(A) and G–16(A), and new Samples G–5(B), G–5(C), G–16(B), G–16(C), and G–16(D) in numerical order.

Appendix G to Part 226—Open-End Model Forms and Clauses

* * * * *

G–5▶(A)◀ Rescission Model Form [(When Opening an Account)] (§ 226.15)
▶G–5(B) Rescission Sample (When Opening an Account) (§ 226.15)
G–5(C) Rescission Sample (When Increasing the Credit Limit) (§ 226.15)◀
G–6 ▶Reserved.◀[Rescission Model Form (For Each Transaction) (§ 226.15)]
G–7 ▶Reserved.◀[Rescission Model Form (When Increasing the Credit Limit) (§ 226.15)]
G–8 ▶Reserved.◀[Rescission Model Form (When Adding a Security Interest) (§ 226.15)]
G–9 ▶Reserved.◀[Rescission Model Form (When Increasing the Security) (§ 226.15)]

* * * * *

[G–16(A) Debt Suspension Model Clause (§ 226.4(d)(3))
G–16(B) Debt Suspension Sample (§ 226.4(d)(3))]
▶G–16(A) Credit Insurance, Debt Cancellation Coverage, or Debt Suspension Coverage Model Form (§ 226.4(d)(1) and (d)(3))
G–16(B) Credit Life Insurance Sample (§ 226.4(d)(1))
G–16(C) Disability Debt Cancellation Coverage Sample (§ 226.4(d)(1) and (d)(3))
G–16(D) Unemployment Debt Suspension Coverage Sample (§ 226.4(d)(1) and (d)(3))◀

* * * * *

BILLING CODE P

G–5 ▶(A)◀ Rescission Model Form [(When Opening an Account)] ▶

Your Right to Cancel

You Could Lose Your Home	[Identification of the type of transaction giving rise to the right of rescission.] [A statement of the security interest and risk to home.]
Your Right to Cancel	[A statement of the right to cancel the transaction giving rise to the right of rescission.] [As applicable, a statement about the creditor's delay in making funds available to the consumer.]
If You Cancel	[Statements about the creditor not charging a cancellation fee and about refunding fees.] [As applicable, statements about the effect of the cancellation on the existing line of credit.]
How to Cancel	[Statements about how a consumer may exercise the right to cancel.]
Deadline to Cancel	[A statement of the calendar date on which the three-business-day period for rescission expires.] [A statement that the right to cancel the transaction may extend beyond the stated date and a statement of how a consumer may exercise the right to cancel in that case.]

[At the creditor's option, a statement that joint homeowners may have the right to rescind and that a rescission by one owner is effective for all owners.]

[At the creditor's option, a format for the consumer to use to acknowledge receipt of the notice, as follows:

Initial here _________ to acknowledge the receipt of this notice on ____________.]

[initials] ***[date]***

[A form for exercise of the consumer's right to cancel, as follows:]

cut here → -

I AM CANCELLING THIS [*identify type of transaction giving rise to the right of rescission***].**

____

Name

____

Property Address

[12345678 ____________________________]

[Account Number]

G–5(B) Rescission Sample (When Opening an Account)

Your Right to Cancel

You Could Lose Your Home	**You are opening a home-equity line of credit. You are giving us the right to take your home if you do not repay the money you owe under this line of credit.**
Your Right to Cancel	**You have the right under federal law to cancel this line of credit on or before the date stated below.** Under federal law, we cannot make any funds available to you until after this date.
If You Cancel	If you cancel, we will: • Not charge you a cancellation fee; and • Refund to you any fees you paid to get this line of credit.
How to Cancel	To cancel, you may submit the bottom portion of this notice to XXX Bank at 1234 Main Street, Anytown, ST, 12345 or 1-XXX-XXX-XXXX (fax).
Deadline to Cancel	**If you want to cancel this line of credit, you must submit the bottom portion of this notice on or before May 14, 2010.*** *In certain circumstances, your right to cancel this line of credit may extend beyond this date. In that case, you must submit the bottom portion of this notice to either the current owner of your line of credit or the person to whom you send payments.

If two or more people are opening this line of credit, cancellation by one person is effective for all of them.

Initial here _________ to acknowledge receipt of this notice on ____________.
(initials) ***(date)***

cut here → -

I AM CANCELLING THIS LINE OF CREDIT.

John Consumer
Name

1234 Central Drive, Anytown, ST 12345
Property Address

12345678
Account Number

G–5(C) Rescission Sample (When Increasing the Credit Limit)

Your Right to Cancel

You Could Lose Your Home	**We are increasing the credit limit on your line of credit. You are giving us the right to take your home if you do not repay the money you owe.**
Your Right to Cancel	**You have the right under federal law to cancel this credit limit increase on or before the date stated below.** Under federal law, we cannot make these funds available to you until after this date.
If You Cancel	If you cancel, we will: • Not charge you a cancellation fee; and • Refund to you any fees you paid to get this credit limit increase. If you cancel this credit limit increase, all of the terms of your current line of credit with us will still apply. You will still owe us your current balance, and we will have the right to take your home if you do not repay that money.
How to Cancel	To cancel, you may submit the bottom portion of this notice to XXX Bank at 1234 Main Street, Anytown, ST, 12345 or 1-XXX-XXX-XXXX (fax).
Deadline to Cancel	**If you want to cancel this credit limit increase, you must submit the bottom portion of this notice on or before May 14, 2010.*** *In certain circumstances, your right to cancel this credit limit increase may extend beyond this date. In that case, you must submit the bottom portion of this notice to either the current owner of your line of credit or the person to whom you send payments.

If two or more people have the right to cancel this credit limit increase, cancellation by one person is effective for all of them.

Initial here _________ to acknowledge receipt of this notice on ____________.
(initials) ***(date)***

cut here → -

I AM CANCELLING THIS CREDIT LIMIT INCREASE.

John Consumer
Name

1234 Central Drive, Anytown, ST 12345
Property Address

12345678
Account Number

G–6—[Rescission Model Form (For Each Transaction)]►Reserved.◄

G–7—[Rescission Model Form (When Increasing the Credit Limit)] ►Reserved.◄

G–8—[Rescission Model Form (When Adding a Security Interest)] ►Reserved.◄

G–9—[Rescission Model Form (When Increasing the Security)] ►Reserved.◄

* * * * *

[G–16(A) Debt Suspension Model Clause

Please enroll me in the optional [insert name of program], and bill my account the fee of [how cost is determined]. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. I understand that my balance will actually grow during the suspension period as interest continues to accumulate.

[To Enroll, Sign Here]/[To Enroll, Initial Here]. X____________

G–16(B) Debt Suspension Sample

Please enroll me in the optional [name of program], and bill my account the fee of $.83 per $100 of my month-end account balance. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. I understand that my balance will actually grow during the suspension period as interest continues to accumulate.

To Enroll, Initial Here. X____________]

►G–16(A) Credit Insurance, Debt Cancellation Coverage, or Debt Suspension Coverage Model Form

OPTIONAL COSTS

Option to Purchase (*Name of Product*)

STOP. You do **not** have to buy (*name of product*) to [get][keep] this line of credit. Go to (*Web site of the Federal Reserve Board*) to learn more about this product.

Do I need this product?	[These payments will only temporarily suspend your payments due and will not reduce the balance you owe. Your balance will actually increase during the suspension period as interest continues to accumulate.] If you already have enough insurance or savings to [pay off this line of credit][make payments on this line of credit] if you (*covered event*), you may not need this product. Other types of insurance can give you similar benefits and are often less expensive.
How much does it cost?	This product will cost up to **(*maximum premium or charge*) per (*period*)** if you borrow the entire credit limit. [The cost depends on your [balance][interest rate].
What is the maximum benefit amount?	This product [will pay off your outstanding line of credit][only covers the first (*maximum benefit amount*) of the outstanding line of credit][will make your minimum payments of up to (*amount*) for (*time period*)]. [You will be responsible for any balance due above (*maximum benefit amount*).]
Can I receive benefits?	**[You may not receive any benefits even if you buy this product.]** You meet the [age][employment] eligibility requirements [but there are other requirements that you must meet. If you do not meet these requirements, you will not receive any benefits even if you buy this product and pay the (*period*) [premium][charge]].
How long does the coverage last?	This product provides coverage for the first (*period*) of your line of credit [or until you reach age (*age*), whichever comes first].

☐ Yes, I want to purchase optional (*name of product*) at a cost of up to (*maximum premium or charge*) per (*period*).

____

[Signature][Initials]

G–16(B) Credit Life Insurance Sample

OPTIONAL COSTS

Option to Purchase Credit Life Insurance

STOP. You do **not** have to buy Credit Life Insurance to get this line of credit. Go to www.frb.gov/creditprotectionproducts to learn more about this product.

Do I need this product?	If you already have enough insurance or savings to pay off this line of credit if you die, you may not need this product. Other types of insurance can give you similar benefits and are often less expensive.
How much does it cost?	This product will cost up to **$63 per month** if you borrow the entire credit limit. The cost depends on your balance and interest rate.
What is the maximum benefit amount?	This product only covers the first $50,000 of the outstanding line of credit. You will be responsible for any balance due above $50,000.
Can I receive benefits?	**You may not receive any benefits even if you buy this product.** You meet the age eligibility requirements, but there are other requirements that you must meet. If you do not meet these requirements, you will not receive any benefits even if you buy this product and pay the monthly premium.
How long does the coverage last?	This product provides coverage for the first 10 years of your line of credit or until you reach age 70, whichever comes first.

☐ Yes, I want to purchase optional Credit Life Insurance at a cost of up to $63 per month.

____

Signature

G–16(C) Disability Debt Cancellation Coverage Sample

OPTIONAL COSTS

Option to Purchase Disability Debt Cancellation Coverage

STOP. You do **not** have to buy Disability Debt Cancellation Coverage to get this line of credit. Go to www.frb.gov/creditprotectionproducts to learn more about this product.

Do I need this product?	If you already have enough insurance or savings to make payments on this line of credit if you are temporarily disabled, you may not need this product. Other types of insurance can give you similar benefits and are often less expensive.
How much does it cost?	This product will cost up to **$42 per month** if you borrow the entire credit limit. The cost depends on your balance and interest rate.
What is the maximum benefit amount?	This product will make your minimum payments of up to $2,000 for 6 months.
Can I receive benefits?	**You may not receive any benefits even if you buy this product.** You meet the employment eligibility requirements, but there are other requirements that you must meet. If you do not meet these requirements, you will not receive any benefits even if you buy this product and pay the monthly charge.
How long does the coverage last?	This product provides coverage for the first 10 years of your line of credit.

☐ Yes, I want to purchase optional Disability Debt Cancellation Coverage at a cost of up to $42 per month.

____
Signature

G–16(D) Unemployment Debt Suspension Coverage Sample (§ 226.4(d)(1) and (d)(3))

OPTIONAL COSTS

Option to Purchase Unemployment Debt Suspension Coverage

STOP. You do **not** have to buy Unemployment Debt Suspension Coverage to get this line of credit. Go to www.frb.gov/creditprotectionproducts to learn more about this product.

Do I need this product?	These payments will only temporarily suspend your payments due and will not reduce the balance you owe. Your balance will actually increase during the suspension period as interest continues to accumulate. If you already have enough insurance or savings to make payments on this line of credit if you are temporarily unemployed, you may not need this product. Other types of insurance can give you similar benefits and are often less expensive.
How much does it cost?	This product will cost up to **$42 per month** if you borrow the entire credit limit. The cost depends on your balance and interest rate.
What is the maximum benefit amount?	This product will make your minimum payments of up to $2,000 for 6 months.
Can I receive benefits?	**You may not receive any benefits even if you buy this product.** You meet the age and employment eligibility requirements, but there are other requirements that you must meet. If you do not meet these requirements, you will not receive any benefits even if you buy this product and pay the monthly charge.
How long does the coverage last?	This product provides coverage for the first 10 years of your line of credit or until you reach age 70, whichever comes first.

☐ Yes, I want to purchase optional Unemployment Debt Suspension Coverage at a cost of up to $42 per month.

____
Signature

* * * * *

26. Appendix H to Part 226 is amended by:

A. Removing the entry for H–(8) and adding entries for H–8(A), and H–8(B), revising the entry for H–9, H–17(A), and H–17(B), and adding entries for H–17(C) and H–17(D) in the table of contents at the beginning of the appendix;

B. Removing H–8, H–17(A), and H–17(B); and

C. Adding new Model Forms H–8(A), H–9, and H–17(A), and new Samples H–8(B), H–17(B), H–17(C), and H–17(D) in numerical order.

Appendix H to Part 226—Closed-End Model Forms and Clauses

* * * * *

* * * * *

H–8 ►(A)◄ Rescission Model Form (General)►

Your Right to Cancel This Loan

You Could Lose Your Home	**You are giving us the right to take your home if you do not repay the money you owe under this loan.**
Your Right to Cancel	**You have the right under federal law to cancel this loan on or before the date stated below.** Under federal law, we cannot make any funds available to you until after this date.
If You Cancel	If you cancel, we will: • Not charge you a cancellation fee; and • Refund to you any fees you paid to get this loan.
How to Cancel	To cancel, you may submit the bottom portion of this notice to ____________ at ____________ [or ____________ or ____________].
Deadline to Cancel	**If you want to cancel this loan, you must submit the bottom portion of this notice on or before ________ _____, _____.*** *In certain circumstances, your right to cancel this loan may extend beyond this date. In that case, you must submit the bottom portion of this notice to either the current owner of your loan or the person to whom you send payments.

[If two or more people have the right to cancel this loan, cancellation by one person is effective for all of them.]

[***Initial here*** ________ ***to acknowledge receipt of this notice on*** ___________.]
[(initials) (date)]

cut here → -

I AM CANCELLING THIS LOAN.

____
Name

____
Property Address

[12345678 ______________________]
[Loan Number]

H–8(B) Rescission Sample (General)

Your Right to Cancel This Loan

You Could Lose Your Home	**You are giving us the right to take your home if you do not repay the money you owe under this loan.**
Your Right to Cancel	**You have the right under federal law to cancel this loan on or before the date stated below.** Under federal law, we cannot make any funds available to you until after this date.
If You Cancel	If you cancel, we will: • Not charge you a cancellation fee; and • Refund to you any fees you paid to get this loan.
How to Cancel	To cancel, you may submit the bottom portion of this notice to Community Bank at 1234 Main Street, Greenville, NY, 12345 or 1-800-555-1212 (fax).
Deadline to Cancel	**If you want to cancel this loan, you must submit the bottom portion of this notice on or before May 14, 2010.*** *In certain circumstances, your right to cancel this loan may extend beyond this date. In that case, you must submit the bottom portion of this notice to either the current owner of your loan or the person to whom you send payments.

If two or more people have the right to cancel this loan, cancellation by one person is effective for all of them.

Initial here _________ to acknowledge receipt of this notice on ____________.
(initials) (date)

cut here → -

I AM CANCELLING THIS LOAN.

John Consumer
Name

1234 Central Drive, Greenville, NY, 12345
Property Address

12345678
Loan Number

H–9 Rescission Model Form [(Refinancing With Original Creditor)]►(New Advance of Money with the Same Creditor)

Your Right to Cancel This Loan

You Could Lose Your Home	**You are giving us the right to take your home if you do not repay the money you owe under this new loan.**
Your Right to Cancel	**You have the right under federal law to cancel this new loan on or before the date stated below.** Under federal law, we cannot make any funds available to you until after this date.
If You Cancel	If you cancel, we will: • Not charge you a cancellation fee; and • Refund to you any fees you paid to get this loan. If you cancel this new loan, all of the terms of your previous loan with us will still apply. You will still owe us your previous balance, and we will have the right to take your home if you do not repay that money.
How to Cancel	To cancel, you may submit the bottom portion of this notice to ____________________ at ______________________________________ [or ______________________________________ or ______________________________________].
Deadline to Cancel	**If you want to cancel this loan, you must submit the bottom portion of this notice on or before __________ _____, _____.*** *In certain circumstances, your right to cancel this loan may extend beyond this date. In that case, you must submit the bottom portion of this notice to either the current owner of your loan or the person to whom you send payments.

[If two or more people have the right to cancel this loan, cancellation by one person is effective for all of them.]

[***Initial here** _________ **to acknowledge the receipt of this notice on*** ____________.]
[(initials) (date)]

cut here → -

I AM CANCELLING THIS LOAN.

____
Name

____
Property Address

[12345678______________________________]
[Loan Number]

* * * * *

[H–17(A) Debt Suspension Model Clause

Please enroll me in the optional [insert name of program], and bill my account the fee of [insert charge for the initial term of coverage]. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. I understand that my balance will actually grow during the suspension period as interest continues to accumulate.

[To Enroll, Sign Here]/[To Enroll, Initial Here]. X______

H–17(B) Debt Suspension Sample

Please enroll me in the optional [name of program], and bill my account the fee of $200. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. I understand that my balance will actually grow during the suspension period as interest continues to accumulate.

To Enroll, Initial Here. X______]

►H–17(A) Credit Insurance, Debt Cancellation Coverage, or Debt Suspension Coverage Model Form

OPTIONAL COSTS

Option to Purchase (*Name of Product*)

STOP. You do **not** have to buy (*name of product*) to get this loan. Go to (*Web site of the Federal Reserve Board*) to learn more about this product.

Do I need this product?	[These payments will only temporarily suspend your payments due and will not reduce the balance you owe. Your balance will actually increase during the suspension period as interest continues to accumulate.] If you already have enough insurance or savings to [pay off this loan][make payments on this loan] if you (*covered event*), you may not need this product. Other types of insurance can give you similar benefits and are often less expensive.
How much does it cost?	This product will cost up to **(*maximum premium or charge*) per (*period*)**. [The cost depends on your [loan balance][interest rate].]
What is the maximum benefit amount?	This product [will pay off your outstanding loan balance, which is now (*outstanding loan balance*)][only covers the first (*maximum benefit amount*) of the outstanding balance on your loan] [will make your loan payments of up to (*amount*) for (*period*)]. [You will be responsible for any balance due above (*maximum benefit amount*).]
Can I receive benefits?	[**You may not receive any benefits even if you buy this product.**] You meet the [age][employment] eligibility requirements [but there are other requirements that you must meet. If you do not meet these requirements, you will not receive any benefits even if you buy this product and pay the (*period*) [premium][charge]].
How long does the coverage last?	This product provides coverage for the first (*period*) of your loan [or until you reach age (*age*), whichever comes first].

☐ Yes, I want to purchase optional (*name of product*) at a cost of up to (*maximum premium or charge*) per (*period*).

____

Signature

H–17(B) Credit Life Insurance Sample

OPTIONAL COSTS

Option to Purchase Credit Life Insurance

STOP. You do **not** have to buy Credit Life Insurance to get this loan. Go to www.frb.gov/creditprotectionproducts to learn more about this product.

Do I need this product?	If you already have enough insurance or savings to pay off this loan if you die, you may not need this product. Other types of insurance can give you similar benefits and are often less expensive.
How much does it cost?	This product will cost up to **$118 per month**. The cost depends on your loan balance.
What is the maximum benefit amount?	This product only covers the first $150,000 of the outstanding balance on your loan. You will be responsible for any balance due above $150,000.
Can I receive benefits?	**You may not receive any benefits even if you buy this product.** You meet the age eligibility requirements, but there are other requirements that you must meet. If you do not meet these requirements, you will not receive any benefits even if you buy this product and pay the monthly premium.
How long does the coverage last?	This product provides coverage for the first 10 years of your loan or until you reach age 70, whichever comes first.

☐ Yes, I want to purchase optional Credit Life Insurance at a cost of up to $118 per month.

____

Signature

H–17(C) Disability Debt Cancellation Coverage Sample

OPTIONAL COSTS

Option to Purchase Disability Debt Cancellation Coverage

STOP. You do **not** have to buy Disability Debt Cancellation Coverage to get this loan. Go to www.frb.gov/creditprotectionproducts to learn more about this product.

Do I need this product?	If you already have enough insurance or savings to make payments on this loan if you are temporarily disabled, you may not need this product. Other types of insurance can give you similar benefits and are often less expensive.
How much does it cost?	This product will cost up to **$81 per month**. The cost depends on your loan balance and interest rate.
What is the maximum benefit amount?	This product will make your loan payments of up to $5,000 for 6 months.
Can I receive benefits?	**You may not receive any benefits even if you buy this product.** You meet the employment eligibility requirements, but there are other requirements that you must meet. If you do not meet these requirements, you will not receive any benefits even if you buy this product and pay the monthly charge.
How long does the coverage last?	This product provides coverage for the first 10 years of your loan.

☐ Yes, I want to purchase optional Disability Debt Cancellation Coverage at a cost of up to $81 per month.

____

Signature

H–17(D) Unemployment Debt Suspension Coverage Sample

OPTIONAL COSTS

Option to Purchase Unemployment Debt Suspension Coverage

STOP. You do **not** have to buy Unemployment Debt Suspension Coverage to get this loan. Go to www.frb.gov/creditprotectionproducts to learn more about this product.

Do I need this product?	These payments will only temporarily suspend your payments due and will not reduce the balance you owe. Your balance will actually increase during the suspension period as interest continues to accumulate. If you already have enough insurance or savings to make payments on this loan if you are temporarily unemployed, you may not need this product. Other types of insurance can give you similar benefits and are often less expensive.
How much does it cost?	This product will cost up to **$81 per month**. The cost depends on your loan balance and interest rate.
What is the maximum benefit amount?	This product will make your loan payments of up to $5,000 for 6 months.
Can I receive benefits?	**You may not receive any benefits even if you buy this product.** You meet the age and employment eligibility requirements, but there are other requirements that you must meet. If you do not meet these requirements, you will not receive any benefits even if you buy this product and pay the monthly charge.
How long does the coverage last?	This product provides coverage for the first 10 years of your loan or until you reach age 70, whichever comes first.

☐ Yes, I want to purchase optional Unemployment Debt Suspension Coverage at a cost of up to $81 per month.

____

Signature

* * * * *

27. Appendix K is revised to read as follows:

Appendix K to Part 226—[Total Annual Loan Cost Rate Computations for] Reverse Mortgage [Transactions] Model Forms and Clauses

►K–1 Open-End Reverse Mortgage Early Disclosure Model Form (§ 226.33(d)(1))
K–2 Open-End Reverse Mortgage Account-Opening Disclosure Model Form (§ 226.33(d)(2))
K–3 Closed-End Reverse Mortgage Model Form (§ 226.33(d)(3))
K–4 Open-End Reverse Mortgage Early Disclosure Sample (§ 226.33(d)(1))
K–5 Open-End Reverse Mortgage Account-Opening Disclosure Sample (§ 226.33(d)(2))
K–6 Closed-End Reverse Mortgage Sample (§ 226.33(d)(3))
K–7 Shared Appreciation Model Clause (§ 226.33(c)(8)(iv))

►K–1 Open-End Reverse Mortgage Early Disclosure Model Form

REVERSE MORTGAGE LOAN SUMMARY

[Name of Creditor] [Date]
[Loan Originator's Unique Identifier]

Borrower & Property Information	
Borrowers' Names & Ages	[Loan Applicants' Name and Ages]
Property Address	[Loan Applicants' Address]
Appraised Value	[Disclosure of value of property]

About this Loan

- [Statement that the consumer has applied for a reverse mortgage that does not have to be repaid for as long as the consumer lives in the home]
- [Statement about the types of payments the consumer may receive]
- [Statement about consumers' obligations] [Cross reference to risks section]
- [Statement that the borrower will continue to receive monthly payments and have access to loan funds as long as the borrower remains in the home even if the loan balance eventually exceeds the value of the home]
- [Statement that the loan must be repaid]

Payment of Loan Funds

[You have chosen to receive your funds as follows:] [You (may/will) receive your funds as follows:]

Initial Advance	[Disclosure of initial advance]
Monthly Advance	[Disclosure of monthly advance]
Line of Credit	[Disclosure of line of credit]

[Statement that consumers may change the type of payments they receive]

Annual Percentage Rate	
Annual Percentage Rate (APR)	[APR(s) applicable to the reverse mortgage, including introductory APR information] [For variable APRs, the following (1) description that the APR varies, (2) how the APR is determined, (3) the frequency of changes in the APR, (4) description of any limitations on changes in the APR (except for minimum and maximum APRs) or a statement that no annual limitation exists, as applicable, and (5) description of any rules relating to changes in the index value and the APR, including preferred rate provisions and rate carryover provisions, if any]
Maximum APR	[Disclosure of maximum APR]
Historical Changes to (identification of index) Rate	[Description of the lowest and highest value of the index and margin in the past 15 years]

Interest charges will be added to your loan balance each month and collected when the loan is due.

Fees	
[Description of consumer's rights to refund of fees]	
Account Opening Fees	
[Account opening fees]	[Description of itemized one-time account opening fees]
TOTAL Account Opening Fees	[Description of total one-time account opening fees]
Monthly Fees *(added to your loan balance each month but not collected until the loan is due)*	
[Monthly Fees]	[Description of fees imposed by the creditor for availability of the reverse mortgage]
Interest Charges	[**Starts at**] [APR] annually [but this rate can change]
Other Fees	
Early Termination Fee	[Description of fees imposed by the creditor for early termination of the reverse mortgage]
[Statements about other fees]	

Borrowing Guidelines	
Minimum Transaction	[Description of any minimum draw requirements]
Limits on Number of Credit Transactions	[Description of any limitations on the number of extensions of credit]
Limits on Amount of Credit Borrowed	[Description of any limitations on the amount of credit that may be obtained during any time period]

How the Loan Balance Grows

[Description of how loan balance may grow, related to table below]

	After 1 Year	**After 5 Years**	**After 10 Years**
How much money will you have received?	$__	$__	$__
How much will be owed for interest + fees?	$__	$__	$__
How much will be owed altogether?	$__	$__	$__

Repayment Options
[Description of repayment options]

Risks	
[Statement about security interest in the consumer's dwelling] [Description of ways the borrower may default on the loan]	
• Foreclose On Your Home	[Statements about possible action by creditor]
• Stop Giving You Money	[Statements about possible actions by creditor]
• Terminate Your Loan	[Statements about possible actions by creditor]
[Statements that other changes can be made to the loan]	

➔ [Statement that the consumer has no obligation to accept the terms disclosed in the table] [Identification of any disclosed term that is subject to change prior to opening the plan, or a statement that all terms disclosed could change before the plan is opened, as applicable]

➔ [Statement that the consumer may be entitled to refund of all fees paid if the consumer decides not to open the plan] [Cross reference to the "Fees" section in the table]

➔ [Statement about asking questions]

➔ [Statement about Board's website]

[if the creditor has a provision for the consumer's signature, a statement that a signature by the consumer only confirms receipt of the disclosure statement]

[____
Borrower's Signature **Date]**

K–2 Open-End Reverse Mortgage Account-Opening Disclosure Model Form

REVERSE MORTGAGE LOAN SUMMARY

[Name of Creditor] [Date]
[Loan Originator's Unique Identifier] [Loan number]

Borrower & Property Information	
Borrowers' Names & Ages	[Loan Applicants' Name and Ages]
Property Address	[Loan Applicants' Address]
Appraised Value	[Disclosure of value of property]

About this Loan

- [Statement that the consumer has applied for a reverse mortgage that does not have to be repaid for as long as the consumer lives in the home]
- [Statement about the types of payments the consumer may receive]
- [Statement about consumers' obligations] [Cross reference to risks section]
- [Statement that the borrower will continue to receive monthly payments and have access to loan funds as long as the borrower remains in the home even if the loan balance eventually exceeds the value of the home]
- [Statement that the loan must be repaid]

Payment of Loan Funds

[You have chosen to receive your funds as follows:] [You (may/will) receive your funds as follows:]

Initial Advance	[Disclosure of initial advance]
Monthly Advance	[Disclosure of monthly advance]
Line of Credit	[Disclosure of line of credit]

[Statement that consumers may change the type of payments they receive]

Annual Percentage Rate	
Annual Percentage Rate (APR)	[APR(s) applicable to the reverse mortgage, including introductory APR information] [For variable APRs, the following: (1) description that the APR varies, (2) how the APR is determined, (3) the frequency of changes in the APR, (4) description of any limitations on changes in the APR (except for minimum and maximum APRs) or a statement that no annual limitation exists, as applicable, and (5) description of any rules relating to changes in the index value and the APR, including preferred rate provisions and rate carryover provisions, if any]
Maximum APR	[Disclosure of maximum APR]
Historical Changes to [identification of index] Rate	[Description of the lowest and highest value of the index and margin in the past 15 years]

Interest charges will be added to your loan balance each month and collected when the loan is due.

Fees	
Account Opening Fees	
[Account opening fees]	[Description of itemized one-time account opening fees]
TOTAL Account Opening Fees	[Description of total one-time account opening fees]
Monthly Fees *(added to your loan balance each month but not collected until the loan is due)*	
[Monthly Fees]	[Description of fees imposed by the creditor for availability of the reverse mortgage]
Interest Charges	[**Starts at**] [APR] annually [but this rate can change]
Transaction Fees	
Exceeding Limits on Amount of Credit Borrowed	[Description of any fees imposed for a consumer's failure to comply with any limitations on the amount of credit that may be obtained during any time period]
Transaction less than $____	[Description of any fees imposed for a consumer's failure to comply with minimum draw requirements]
Exceeding Limits on Number of Credit Transactions	[Description of any fees imposed for a consumer's failure to comply with any limitations on the number of extensions of credit]
[Itemization of any transaction charges imposed by the creditor for use of the reverse mortgage]	
Other Fees	
Early Termination Fee	[Description of fees imposed by the creditor for early termination of the reverse mortgage]
[Statements about other fees]	

Borrowing Guidelines	
Minimum Transaction	[Description of any minimum draw requirements]
Limits on Number of Credit Transactions	[Description of any limitations on the number of extensions of credit]
Limits on Amount of Credit Borrowed	[Description of any limitations on the amount of credit that may be obtained during any time period]

How the Loan Balance Grows

[Description of how loan balance may grow, related to table below]

	After 1 Year	After 5 Years	After 10 Years
How much money will you have received?	$__	$__	$__
How much will be owed for interest + fees?	$__	$__	$__
How much will be owed altogether?	$__	$__	$__

Repayment Options

[Description of repayment options]

Risks

[Statement about security interest in the consumer's dwelling]

[Description of ways the borrower may default on the loan]

• Foreclose On Your Home	[Statements about possible action by creditor]
• Stop Giving You Money	[Statements about possible actions by creditor]
• Terminate Your Loan	[Statements about possible actions by creditor]

[Statements that other changes can be made to the loan]

Billing Rights: [Reference to account agreement for details on billing-error rights]

➔ [Statement that the consumer has no obligation to accept the terms disclosed in the table] [Statement that the consumer should use this form to confirm that these are the terms for which the consumer applied]

➔ [Statement about asking questions]

➔ [Statement about Board's website]

[if the creditor has a provision for the consumer's signature, a statement that a signature by the consumer only confirms receipt of the disclosure statement]

[____

Borrower's Signature **Date]**

K–3 Closed-End Reverse Mortgage Model Form

REVERSE MORTGAGE LOAN SUMMARY

[Name of Creditor] [Date]

[Loan Originator's Unique Identifier]

Borrower & Property Information	
Borrowers' Names & Ages	[Loan Applicants' Name and Ages]
Property Address	[Loan Applicants' Address]
Appraised Value	[Disclosure of value of property]

About this Loan

- [Statement that the consumer has applied for a reverse mortgage that does not have to be repaid for as long as the consumer lives in the home]
- [Statement about the types of payments the consumer may receive]
- [Statement about consumers' obligations] [Cross reference to risks section]
- [Statement that the borrower will continue to receive monthly payments and have access to loan funds as long as the borrower remains in the home even if the loan balance eventually exceeds the value of the home]
- [Statement that the loan must be repaid]

Payment of Loan Funds

[You have chosen to receive your funds as follows:] [You (may/will) receive your funds as follows:]

Initial Advance	[Disclosure of initial advance]
Monthly Advance	[Disclosure of monthly advance]
Line of Credit	[Disclosure of line of credit]

[Statement that consumers may change the type of payments they receive]

Annual Percentage Rate	
Overall cost of this loan including interest and settlement charges	___% APR
Rate Type	This is a[n] [adjustable] [fixed] [step] rate.
Rate Calculation	[When the (length of time) introductory period ends,] your rate will be determined (frequency) based on the (identification of index) (the market rate) plus ___%.]
Rate Change Limits	[When the (length of time) introductory period ends,] your interest rate can increase up to ___% from (period) to the next, and no more than ___% total for the life of the loan, which would result in a maximum ever rate of ___%.]
Historical Changes to (identification of index) Rate	[Description of the lowest and highest value of the index and margin in the past 15 years]

Interest charges will be added to your loan balance each month and collected when the loan is due.

Fees	
Account Opening Fees	
[Account opening fees]	[Description of itemized one-time account opening fees]
TOTAL Account Opening Fees	[Description of total one-time account opening fees]
Monthly Fees *(added to your loan balance each month but not collected until the loan is due)*	
[Monthly Fees]	[Description of fees imposed by the creditor for availability of the]
Interest Charges	[**Starts at**] [interest rate] annually [but this rate can change]
Other Fees	
Prepayment Penalty	[Description of fees imposed by the creditor for early termination or prepayment in full of the reverse mortgage]
[Statements about other fees]	

Borrowing Guidelines	
Minimum Transaction	[Description of any minimum transaction requirements]
Limits on Number of Credit Transactions	[Description of any limitations on the number of extensions of credit]
Limits on Amount of Credit Borrowed	[Description of any limitations on the amount of credit that may be obtained during any time period]

How the Loan Balance Grows

[Description of how loan balance may grow, related to table below]

	After 1 Year	**After 5 Years**	**After 10 Years**
How much money will you have received?	$__	$__	$__
How much will be owed for interest + fees?	$__	$__	$__
How much will be owed altogether?	$__	$__	$__

Repayment Options
[Description of repayment options]

Risks	
[Statement about security interest in the consumer's dwelling] [Description of ways the borrower may default on the loan]	
• Foreclose On Your Home	[Statements about possible action by creditor]
• Stop Giving You Money	[Statements about possible actions by creditor]
• Terminate Your Loan	[Statements about possible actions by creditor]
[Statements that other changes can be made to the loan]	

➔ [Statement that the consumer has no obligation to accept the terms disclosed in the table]

➔ [Statement about asking questions]

➔ [Statement about Board's website]

[if the creditor has a provision for the consumer's signature, a statement that a signature by the consumer only confirms receipt of the disclosure statement]

[____

Borrower's Signature **Date]**

K–4 Open-End Reverse Mortgage Early Disclosure Sample

REVERSE MORTGAGE LOAN SUMMARY

LENDER: ABC Bank DATE: April 30, 2010
LOAN OFFICER: 12345 1234

Borrower & Property Information	
Borrowers' Names & Ages	John Doe (84); Jane Doe (82)
Property Address	123 Ward Street, Jingle Bells, TX 12345
Appraised Value	$275,000

About this Loan

- You are applying for a reverse mortgage loan on your home that you do not have to repay for as long as you live there.
- You may get money from this loan paid to you all at once, as a regular monthly advance, or at times and in amounts that you choose.
- You will continue to own your home so you must pay your property taxes and insurance, and keep the home in good repair (see the Risks section).
- If the loan balance eventually is greater than the value of the home, you will continue to receive monthly payments and have access to your loan funds as long as you remain in the home.
- The amount of the loan, plus interest and fees, must be paid back in full if the home is sold **or** when the last surviving borrower dies or does not live in the house for 12 consecutive months.

Payment of Loan Funds

You may receive your funds as follows:

Line of Credit	**$186,974** available to you at any time while you remain in your home
You may choose to change the type of payments you receive. Your other choices are:	
Initial Advance	paid to you after you accept the loan
Monthly Advance	paid to you each month while you remain in your home

Annual Percentage Rate	
Annual Percentage Rate (APR)	**2.93%.** This is a variable rate that will change annually based on the Treasury rate plus 2.5%. Each year, your rate can increase by up to 2.0%.
Maximum APR	**7.93%**
Historical Changes to Treasury Rate	Over the past 15 years, the Treasury rate plus 2.5% has varied between 2.77% and 8.90%.
Interest charges will be added to your loan balance each month and collected when the loan is due.	

Fees

We will refund all fees you paid if you tell us that you do not want to open an account:

- for any reason within three business days after you receive this statement; or
- for any reason within three business days after you receive reverse mortgage counseling; or
- any time before your account is opened if any of these terms (other than the APR) change.

Account Opening Fees	
Loan Origination	$ 4,735
Inspection	$ 500
Title Search & Title Insurance	$ 595
Appraisal	$ 295
Reverse Mortgage Insurance Premium	$ 5,500
TOTAL Account Opening Fees	**$11,625**

Monthly Fees *(added to your loan balance each month but not collected until the loan is due)*	
Servicing Fee	**$35 per month** ($420 annually)
Reverse Mortgage Insurance Premium	**0.042%** monthly (0.5% annually)
Monthly Interest Charges	**Starts at 2.93%** annually but this rate can change.

Other Fees

Other fees may apply. Ask us for additional information about these fees.

How the Loan Balance Grows

The table shows an example of how your loan balance might grow if:

- You borrow $186,974 after you accept the loan and do not borrow any more money, *and*
- The APR stays at 2.93%.

	After 1 Year	After 5 Years	After 10 Years
How much money will you have received?	$186,974	$186,974	$186,974
How much will be owed for interest + fees?	$18,972	$51,015	$97,764
How much will be owed altogether?	**$205,946**	**$237,989**	**$255,750**

Repayment Options

At the end of the loan, you or your heirs may either:

- Pay the loan balance in full and keep the home, or
- Sell the home and use the proceeds to pay off the loan. If your home sells for less than you owe, you will not be required to pay the difference. If your home sells for more than you owe, the difference will be given to you or your heirs.

Risks

Your reverse mortgage loan will be secured by your home. If you default on your reverse mortgage loan by:

- Allowing the property to deteriorate beyond reasonable wear and tear; or
- Failing to pay property taxes or insurance; or
- Failing to live in the house for 12 consecutive months; or
- Failing to meet any other obligation

…then we may take any or all of the following actions:

• Foreclose On Your Home	We could foreclose on your property and require that you leave the home.
• Stop Giving You Money	We may stop making payments to you and not allow you to borrow any more money from your line of credit, even if you have borrowed less than your credit limit.
• Terminate Your Loan	We may terminate your loan, make you pay the outstanding loan balance in one payment, and charge you fees on termination.

We may also make other changes to your loan.

➔ **You have no obligation to accept these terms. These terms could change before we open your account.**

➔ **You may be entitled to a refund of all fees paid if you decide not to open an account.** See "Fees" section above for more details.

➔ **Ask questions if you do not understand any part of this form.**

➔ **For more information, go to** *www.frb.gov/reverse_mortgages/*.

By signing below, I acknowledge receipt of this form.

____

Borrower's Signature **Date**

K–5 Open-End Reverse Mortgage Account-Opening Disclosure Sample

REVERSE MORTGAGE LOAN SUMMARY

LENDER: ABC Bank DATE: April 30, 2010
LOAN OFFICER: 12345 1234 LOAN NUMBER: 123-12-1234-567

Borrower & Property Information	
Borrowers' Names & Ages	John Doe (84); Jane Doe (82)
Property Address	123 Ward Street, Jingle Bells, TX 12345
Appraised Value	$275,000

About this Loan

- You are applying for a reverse mortgage loan on your home that you do not have to repay for as long as you live there.
- You may get money from this loan paid to you all at once, as a regular monthly advance, or at times and in amounts that you choose.
- You will continue to own your home so you must pay your property taxes and insurance, and keep the home in good repair (see the Risks section).
- If the loan balance eventually becomes greater than the value of the home, you will continue to receive monthly payments and have access to your loan funds as long as you remain in the home.
- The amount of the loan, plus interest and fees, must be paid back in full if the home is sold **or** when the last surviving borrower dies or does not live in the house for 12 consecutive months.

Payment of Loan Funds

You have chosen to receive your funds as follows:

Initial Advance	**$12,000**	will be paid to you after you accept the loan
Monthly Advance	**$ 1,287**	will be paid to you each month while you remain in your home
Line of Credit	**$15,000**	will be available to you at any time while you remain in your home

You may choose to change the type of payments you receive.

Annual Percentage Rate	
Annual Percentage Rate (APR)	**2.93%.** This is a variable rate that will change annually based on the Treasury rate plus 2.5%. Each year, your rate can increase by up to 2.0%.
Maximum APR	**7.93%**
Historical Changes to Treasury Rate	Over the past 15 years, the Treasury rate plus 2.5% has varied between 2.77% and 8.90%.

Interest charges will be added to your loan balance each month and collected when the loan is due.

Fees

Account Opening Fees	
Loan Origination	$ 4,735
Inspection	$ 500
Title Search & Title Insurance	$ 595
Appraisal	$ 295
Reverse Mortgage Insurance Premium	$ 5,500
TOTAL Account Opening Fees	**$11,625**
Monthly Fees *(added to your loan balance each month but not collected until the loan is due)*	
Servicing Fee	**$35 per month** ($420 annually)
Reverse Mortgage Insurance Premium	**0.042%** monthly (0.5% annually)
Interest Charges	**Starts at 2.93%** annually but this rate can change.
Other Fees	
Other fees may apply; see your account agreement for details. Ask us for additional information about these fees.	

How the Loan Balance Grows

The table shows an example of how your loan balance might grow if:

- You never borrow from the Line of Credit, only receiving the *initial* and *monthly* advances listed on page 1, *and*
- The APR stays at 2.93%.

	After 1 Year	After 5 Years	After 10 Years
How much money will you have received?	$27,443.00	$80,208.00	$166,434.00
How much will be owed for interest + fees?	$13,166.00	$23,023.00	$56,300.00
How much will be owed altogether?	**$40,609.00**	**$103,232.00**	**$222,733.00**

Repayment Options

At the end of the loan, you or your heirs may either:

- Pay the loan balance in full and keep the home, or
- Sell the home and use the proceeds to pay off the loan. If your home sells for less than you owe, you will not be required to pay the difference. If your home sells for more than you owe, the difference will be given to you or your heirs.

Risks

Your reverse mortgage loan will be secured by your home. If you default on your reverse mortgage loan by:

- Allowing the property to deteriorate beyond reasonable wear and tear; or
- Failing to pay property taxes or insurance; or
- Failing to live in the house for 12 consecutive months; or
- Failing to meet any other obligation

...then we may take any or all of the following actions:

• Foreclose On Your Home	We could foreclose on your property and require that you leave the home.
• Stop Giving You Money	We may stop making payments to you and not allow you to borrow any more money from your line of credit, even if you have borrowed less than your credit limit.
• Terminate Your Loan	We may terminate your loan, make you pay the outstanding loan balance in one payment, and charge you fees on termination.

We may also make other changes to your loan.

Billing Rights: Information on your rights to dispute transactions and how to exercise those rights is provided in your account agreement.

➔ **You have no obligation to accept these terms.** Use this statement to confirm that these are the terms for which you applied.

➔ **Ask questions if you do not understand any part of this form.**

➔ **For more information, go to** *www.frb.gov/reverse_mortgages/*.

By signing below, I acknowledge receipt of this form.

Borrower's Signature **Date**

K–6 Closed-End Reverse Mortgage Sample

REVERSE MORTGAGE LOAN SUMMARY

LENDER: ABC Bank DATE: April 30, 2010
LOAN OFFICER NO.: 12345-1234

Borrower & Property Information	
Borrowers' Names & Ages	John Marsh (62)
Borrowers' Account Number	123456789
Property Address	123 Ward Street, Jingle Bells, TX 12345
Appraised Value	$120,000

About this Loan

- You are applying for a reverse mortgage loan on your home that you do not have to repay for as long as you remain in the home.
- You will continue to own your home so you must pay your property taxes and insurance, and keep the home in good repair (see the Risks section).
- The amount of the loan, plus interest and fees, must be paid back in full if the home is sold **or** when the last surviving borrower dies or does not live in the house for 12 consecutive months.

Payment of Loan Funds

You will receive your funds as follows:

Initial Advance	**$55,242** will be paid to you after you accept the loan

Annual Percentage Rate (APR)	
Overall cost of this loan including interest and settlement charges	**7.16 % APR**
Rate Type	This is a fixed rate

Interest charges will be added to your loan balance each month and collected when the loan is due.

Fees	
Account Opening Fees	
Loan Origination	$ 2,500
Inspection	$ 500
Title Search & Title Insurance	$ 590
Appraisal	$ 298
Settlement Fee	$ 415
Counseling Fee	$ 125
Reverse Mortgage Insurance Premium	$ 2,400
TOTAL Account Opening Fees	**$6,828**
Monthly Fees *(added to your loan balance each month but not collected until the loan is due)*	
Servicing Fee	**$30 per month** ($360 annually).
Reverse Mortgage Insurance Premium	**0.042%** monthly (0.5% annually).
Interest Charges	**5.56%** annually.

How the Loan Balance Grows

The table shows how your loan balance will grow.

	After 1 Year	After 5 Years	After 10 Years
How much money will you have received?	$55,242.00	$55,242.00	$55,242.00
How much will be owed for interest + fees?	$11,068.00	$30,838.00	$63,321.00
How much will be owed altogether?	**$66,310.00**	**$86,080.00**	**$111,600.00**

Total Payments	If your loan lasted 21 years, you would make one payment totaling $236,165.31. Of this amount, $180,923.50 would go to interest and settlement charges. This amount, and your amount financed of $55,241.81, is used to calculate your APR.

Repayment Options

At the end of the loan, you or your heirs may either:

- Pay the loan balance in full and keep the home, or
- Sell the home and use the proceeds to pay off the loan. If your home sells for less than you owe, you will not be required to pay the difference. If your home sells for more than you owe, the difference will be given to you or your heirs.

Risks

Your reverse mortgage loan will be secured by your home. If you default on your reverse mortgage loan by:

- Allowing the property to deteriorate beyond reasonable wear and tear; or
- Failing to pay property taxes or insurance; or
- Failing to live in the house for 12 consecutive months; or
- Failing to meet any other obligation;

...then we may take any or all of the following actions:

• Foreclose On Your Home	We could foreclose on your property and require that you leave the home.
• Terminate Your Loan	We may terminate your loan, make you pay the outstanding loan balance in a single payment, and charge you fees on termination.

➔ **You have no obligation to accept these terms.**

➔ **Ask questions if you do not understand any part of this form.**

➔ **For more information, go to** *www.frb.gov/reverse_mortgages/*.

By signing below I acknowledge receipt of this form.

Borrower's Signature **Date**

K–7 Shared Appreciation Model Clause

Shared Appreciation Model Clause

Shared Appreciation

This loan includes a Shared Appreciation Agreement, **which means that the lender will be entitled to [shared appreciation percent]% of any gain you make when you sell or refinance your home**.

For example, if your home were worth $100,000 more when the loan becomes due than it is worth today, you would owe us an additional $[shared appreciation amount] on the loan.

BILLING CODE C

[(a) *Introduction.* Creditors are required to disclose a series of total annual loan cost rates for each reverse mortgage transaction. This appendix contains the equations creditors must use in computing the total annual loan cost rate for various transactions, as well as instructions, explanations, and examples for various transactions. This appendix is modeled after appendix J of this part (Annual Percentage Rates Computations for Closed-End Credit Transactions); creditors should consult appendix J of this part for additional guidance in using the formulas for reverse mortgages.

(b) *Instructions and equations for the total annual loan cost rate*—(1) *General rule.* The total annual loan cost rate shall be the nominal total annual loan cost rate determined by multiplying the unit-period rate by the number of unit-periods in a year.

(2) *Term of the transaction.* For purposes of total annual loan cost disclosures, the term of a reverse mortgage transaction is assumed to begin on the first of the month in which consummation is expected to occur. If a loan cost or any portion of a loan cost is initially incurred beginning on a date later than consummation, the term of the transaction is assumed to begin on the first of the month in which that loan cost is incurred. For purposes of total annual loan cost disclosures, the term ends on each of the assumed loan periods specified in § 226.33(c)(6).

(3) *Definitions of time intervals.*

(i) A *period* is the interval of time between advances.

(ii) A *common period* is any period that occurs more than once in a transaction.

(iii) A *standard interval of time* is a day, week, semimonth, month, or a multiple of a week or a month up to, but not exceeding, 1 year.

(iv) All months shall be considered to have an equal number of days.

(4) *Unit-period.* (i) In all transactions other than single-advance, single-payment transactions, the unit-period shall be that common period, not to exceed one year, that occurs most frequently in the transaction, except that:

(A) If two or more common periods occur with equal frequency, the smaller of such common periods shall be the unit-period; or

(B) If there is no common period in the transaction, the unit-period shall be that period which is the average of all periods rounded to the nearest whole standard interval of time. If the average is equally near two standard intervals of time, the lower shall be the unit-period.

(ii) In a single-advance, single-payment transaction, the unit-period shall be the term of the transaction, but shall not exceed one year.

(5) *Number of unit-periods between two given dates.* (i) The number of days between two dates shall be the number of 24-hour intervals between any point in time on the first date to the same point in time on the second date.

(ii) If the unit-period is a month, the number of full unit-periods between two dates shall be the number of months. If the unit-period is a month, the number of unit-periods per year shall be 12.

(iii) If the unit-period is a semimonth or a multiple of a month not exceeding 11 months, the number of days between two dates shall be 30 times the number of full months. The number of full unit-periods shall be determined by dividing the number of days by 15 in the case of a semimonthly unit-period or by the appropriate multiple of 30 in the case of a multimonthly unit-period. If the unit-period is a semimonth, the number of unit-periods per year shall be 24. If the number of unit-periods is a multiple of a month, the number of unit-periods per year shall be 12 divided by the number of months per unit-period.

(iv) If the unit-period is a day, a week, or a multiple of a week, the number of full unit-periods shall be determined by dividing the number of days between the two given dates by the number of days per unit-period. If the unit-period is a day, the number of unit-periods per year shall be 365. If the unit-period is a week or a multiple of a week, the number of unit-periods per year shall be 52 divided by the number of weeks per unit-period.

(v) If the unit-period is a year, the number of full unit-periods between two dates shall be the number of full years (each equal to 12 months).

(6) *Symbols.* The symbols used to express the terms of a transaction in the equation set forth in paragraph (b)(8) of this appendix are defined as follows:

A_j=The amount of each periodic or lump-sum advance to the consumer under the reverse mortgage transaction.

i=Percentage rate of the total annual loan cost per unit-period, expressed as a decimal equivalent.

j=The number of unit-periods until the jth advance.

n=The number of unit-periods between consummation and repayment of the debt.

P_n=Min (Bal_n, Val_n). This is the maximum amount that the creditor can be repaid at the specified loan term.

Bal_n=Loan balance at time of repayment, including all costs and fees incurred by the consumer (including any shared appreciation or shared equity amount) compounded to time n at the creditor's contract rate of interest.

Val_n=$Val_0(1 + \sigma)^y$, where Val_0 is the property value at consummation, σ is the assumed annual rate of appreciation for the dwelling, and y is the number of years in the assumed term. Val_n must be reduced by the amount of any equity reserved for the consumer by agreement between the parties, or by 7 percent (or the amount or percentage specified in the credit agreement), if the amount required to be repaid is limited to the net proceeds of sale.

σ = The summation operator.

$$= \sum_{j=0}^{x-1} (1+i)^{x-j}$$

$$= (1+i)^x + (1+i)^{x-1} + \cdots (1+i)^1;\ or$$

$$= \frac{(1+i)^x - 1}{i} \times (1+i)$$

Symbols used in the examples shown in this appendix are defined as follows:

w=The number of unit-periods per year.

I=wi×100=the nominal total annual loan cost rate.

(7) *General equation.* The total annual loan cost rate for a reverse mortgage transaction must be determined by first solving the following formula, which sets forth the relationship between the advances to the consumer and the amount owed to the creditor under the terms of the reverse mortgage agreement for the loan cost rate per unit-period (the loan cost rate per unit-period is then multiplied by the number of unit-periods per year to obtain the total annual loan cost rate I; that is, I = wi):

$$\sum_{j=0}^{x-1} A_j (1+i)^{x-j} = P_x$$

(8) *Solution of general equation by iteration process.* (i) The general equation in paragraph (b)(7) of this appendix, when applied to a simple transaction for a reverse mortgage loan of equal monthly advances of $350 each, and with a total amount owed of $14,313.08 at an assumed repayment period of two years, takes the special form:

$$P_x = 350 FV_{24\neg}\ i, or$$

$$P_x = 350 \times \left[\frac{(1+i)^n - 1}{i} \times (1+i) \right]$$

Using the iteration procedures found in steps 1 through 4 of (b)(9)(i) of appendix J of this part, the total annual loan cost rate, correct to two decimals, is 48.53%.

(ii) In using these iteration procedures, it is expected that calculators or computers will be programmed to carry all available decimals throughout the calculation and that enough iterations will be performed to make virtually certain that the total annual loan cost rate obtained, when rounded to two decimals, is correct. Total annual loan cost rates in the examples below were obtained by using a 10-digit programmable calculator and the iteration procedure described in appendix J of this part.

(9) *Assumption for discretionary cash advances.* If the consumer controls the timing of advances made after consummation (such as in a credit line arrangement), the creditor must use the general formula in paragraph (b)(7) of this appendix. The total annual loan cost rate shall be based on the assumption that 50 percent of the principal loan amount is advanced at closing, or in the case of an open-end transaction, at the time the consumer becomes obligated under the plan. Creditors shall assume the advances are made at the interest rate then in effect and that no further advances are made to, or repayments made by, the consumer during the term of the transaction or plan.

(10) *Assumption for variable-rate reverse mortgages.* If the interest rate for a reverse mortgage transaction may increase during the loan term and the amount or timing is not known at consummation, creditors shall base the disclosures on the initial interest rate in effect at the time the disclosures are provided.

(11) *Assumption for closing costs.* In calculating the total annual loan cost rate, creditors shall assume all closing and other consumer costs are financed by the creditor.

(c) *Examples of total annual loan cost rate computations*—(1) *Lump-sum advance at consummation.*

Lump-sum advance to consumer at consummation: $30,000

Total of consumer's loan costs financed at consummation: $4,500

Contract interest rate: 11.60%

Estimated time of repayment (based on life expectancy of a consumer at age 78): 10 years

Appraised value of dwelling at consummation: $100,000

Assumed annual dwelling appreciation rate: 4%

$$30{,}000(1+i)^{10-0} + \sum_{j=0}^{9} 0(1+i)^{10-j} = 103{,}385.84$$

P_{10}= Min (103,385.84, 137,662.72)
i = .1317069438
Total annual loan cost rate
(100(.1317069438 × 1)) = 13.17%

(2) *Monthly advance beginning at consummation.*

Monthly advance to consumer, beginning at consummation: $492.51
Total of consumer's loan costs financed at consummation: $4,500
Contract interest rate: 9.00%
Estimated time of repayment (based on life expectancy of a consumer at age 78): 10 years
Appraised value of dwelling at consummation: $100,000

$$P_{120} = Min\,(107{,}053.63,\ 200{,}780.02)$$

$$492.51 \times \left[\frac{(1+i)^{120} - 1}{i} \times (1+i) \right] = 107{,}053.63$$

$$i = .009061140$$

Assumed annual dwelling appreciation rate: 8%
Total annual loan cost rate (100(.009061140 × 12))=10.87%

(3) *Lump sum advance at consummation and monthly advances thereafter.*

Lump sum advance to consumer at consummation: $10,000
Monthly advance to consumer, beginning at consummation: $725
Total of consumer's loan costs financed at consummation: $4,500
Contract rate of interest: 8.5%
Estimated time of repayment (based on life expectancy of a consumer at age 75): 12 years
Appraised value of dwelling at consummation: $100,000

$$P_{144} = Min\,(221{,}818.30,\ 234{,}189.82)$$

$$10{,}000(1+i)^{144-0} + \sum_{j=0}^{143} 725(1+i)^{144-j} = 221{,}818.30$$

$$i = .007708844$$

Assumed annual dwelling appreciation rate: 8%
Total annual loan cost rate (100(.007708844 × 12)) = 9.25%

(d) *Reverse mortgage model form and sample form* —(1) *Model form.*

Total Annual Loan Cost Rate

Loan Terms

Age of youngest borrower:
Appraised property value:
Interest rate:
Monthly advance:
Initial draw:
Line of credit:

Initial Loan Charges

Closing costs:
Mortgage insurance premium:
Annuity cost:

Monthly Loan Charges

Servicing fee:

Other Charges

Mortgage insurance:
Shared Appreciation:

Repayment Limits

Assumed annual appreciation	Total annual loan cost rate			
	2-year loan term	[ ]-year loan term]	[ ]-year loan term	[ ]-year loan term
0%	....	[ ]	....	....
4%	....	[ ]	....	....
8%	....	[ ]	....	....

The cost of any reverse mortgage loan depends on how long you keep the loan and how much your house appreciates in value. Generally, the longer you keep a reverse mortgage, the lower the total annual loan cost rate will be.

This table shows the estimated cost of your reverse mortgage loan, expressed as an annual rate. It illustrates the cost for three [four] loan terms: 2 years, [half of life expectancy for someone your age,] that life expectancy, and 1.4 times that life expectancy. The table also shows the cost of the loan, assuming the value of your home appreciates at three different rates: 0%, 4% and 8%.

The total annual loan cost rates in this table are based on the total charges associated with this loan. These charges typically include principal, interest, closing costs, mortgage insurance premiums, annuity costs, and servicing costs (but not costs when you sell the home).

The rates in this table are estimates. Your actual cost may differ if, for example, the amount of your loan advances varies or the interest rate on your mortgage changes.

Signing an Application or Receiving These Disclosures Does Not Require You To Complete This Loan

(2) Sample Form.

Total Annual Loan Cost Rate

Loan Terms

Age of youngest borrower: 75
Appraised property value: $100,000
Interest rate: 9%
Monthly advance: $301.80
Initial draw: $1,000
Line of credit: $4,000

Initial Loan Charges

Closing costs: $5,000
Mortgage insurance premium: None
Annuity cost: None

Monthly Loan Charges

Servicing fee: None

Other Charges

Mortgage insurance: None
Shared Appreciation: None

Repayment Limits

Net proceeds estimated at 93% of projected home sale

Assumed annual appreciation	Total annual loan cost rate			
	2-year loan term (percent)	[6-year loan term] (percent)	12-year loan term (percent)	17-year loan term (percent)
0%	39.00	[14.94]	9.86	3.87
4%	39.00	[14.94]	11.03	10.14
8%	39.00	[14.94]	11.03	10.20

The cost of any reverse mortgage loan depends on how long you keep the loan and how much your house appreciates in value. Generally, the longer you keep a reverse mortgage, the lower the total annual loan cost rate will be.

This table shows the estimated cost of your reverse mortgage loan, expressed as an annual rate. It illustrates the cost for three [four] loan terms: 2 years, [half of life expectancy for someone your age,] that life expectancy, and 1.4 times that life expectancy. The table also shows the cost of the loan, assuming the value of your home appreciates at three different rates: 0%,4% and 8%.

The total annual loan cost rates in this table are based on the total charges associated with this loan. These charges typically include principal, interest, closing costs, mortgage insurance premiums, annuity costs, and servicing costs (but not disposition costs—costs when you sell the home).

The rates in this table are estimates. Your actual cost may differ if, for example, the amount of your loan advances varies or the interest rate on your mortgage changes.

Signing an Application or Receiving These Disclosures Does Not Require You To Complete This Loan]

Appendix L to Part 226—►[Reserved]◄

28. Appendix L is removed and reserved.

29. In Supplement I to Part 226, as proposed to be amended on August 26, 2009 (74 FR 43232, 74 FR 43428) is further amended by:

A. Under *Section 226.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability, 1(d) Organization, Paragraph 1(d)(5),* paragraph 1 is revised.

B. Under *Section 226.2—Definitions and Rules of Construction, 2(a) Definitions:*

i. *2(a)(6) Business day,* paragraph 2 is revised;

ii. *2(a)(11) Consumer,* paragraphs 1 and 3 are revised, and paragraph 4 is added;

iii. *2(a)(25) Security interest,* paragraph 6 is revised.

C. Under *Section 226.3—Exempt Transactions, 3(a) Business, commercial, agricultural, or organizational credit,* paragraph 8 is revised.

D. Under *Section 226.4—Finance Charge:*

i. *4(a) Definition, 4(a)(1) Charges by third parties,* paragraph 2 is removed;

ii. *4(d) Insurance and debt cancellation and debt suspension coverage* and *4(d)(3) Voluntary debt cancellation or suspension fees* are revised.

E. Under *Section 226.5—General Disclosure Requirements:*

i. *5(a) Form of disclosures, 5(a)(1) General,* paragraphs 1 and 3 are revised;

ii. *5(b) Time of disclosures, 5(b)(1) Account-opening disclosures, 5(b)(1)(ii) Charges imposed as part of an open-end (not home-secured) plan,* the heading and paragraph 1 are revised.

F. Under *Section 226.5b—Requirements for Home-Equity Plans:*

i. *5b(c) Content of Disclosures, Paragraph 5b(c)(9)(ii),* paragraph 6 is removed, and *Paragraph 5b(c)(9)(iii),* paragraph 3 is removed;

ii. *5b(d) Refund of fees* is revised;

iii. *5b(e) Imposition of nonrefundable fees* is revised.

G. Under *Section 226.6—Account-Opening Disclosures, 6(a) Rules affecting home-equity plans,* paragraph 3 is added.

H. Under *Section 226.9—Subsequent Disclosure Requirements, 9(c) Change in terms, 9(c)(1) Rules affecting home-equity plans, 9(c)(1)(ii) Charges not covered by § 226.6(a)(1) and (a)(2)* is revised, and *9(c)(1)(iii) Disclosure requirements, 9(c)(1)(iii)(A) Changes to terms described in account-opening table,* paragraphs 2 and 6 are revised.

I. Under *Section 226.15—Right of Rescission:*

i. Paragraph 1 is revised;

ii. *15(a) Consumer's right to rescind, Paragraph 15(a)(1)* is revised;

iii. *15(a) Consumer's right to rescind, Paragraph 15(a)(2),* the heading is revised; new heading *15(a)(2)(i) Provision of written notification* is added and paragraph 1 is revised; and *15(a)(2)(ii) Party the consumer shall notify, 15(a)(2)(ii)(B) After the three-business day period following the transaction,* paragraph 1 is added;

iv. *15(a) Consumer's right to rescind, Paragraph 15(a)(3)* is revised;

v. *15(a) Consumer's right to rescind, Paragraph 15(a)(4)* is revised;

vi. *15(a) Consumer's right to rescind, Paragraph 15(a)(5)* is added;

vii. *15(b) Notice of right to rescind* is revised;

viii. *15(c) Delay of creditor's performance* is revised;

ix. *15(d) Effects of rescission* is revised;

x. *15(e) Consumer's waiver of right to rescind* is revised.

J. Under *Section 226.16—Advertising, 16(d) Additional requirements for home-equity plans,* paragraph 5 is revised, and paragraphs 10, 11, and 12 are added.

K. Under *Section 226.17—General Disclosure Requirements:*

i. *17(c) Basis of disclosures and use of estimates, Paragraph 17(c)(1),* paragraph 14 is removed;

ii. *17(d) Multiple creditors; multiple consumers,* paragraph 2 is revised;

iii. *17(f) Early disclosures, Paragraph 17(f)(2),* paragraph 1 is revised.

L. Under *Section 226.18—Content of Disclosures, 18(k) Prepayment, Paragraph 18(k)(1),* paragraph 1 is revised.

M. Under *Section 226.19—Certain Mortgage and Variable-Rate Transactions:*

i. The heading is revised and paragraph 1 is added;

ii. *19(a) Mortgage transactions* is added;

iii. *19(a)(1)(i) Time of disclosure* through *19(a)(5)(iii) Redisclosure for timeshare plans* are revised;

iv. *19(b) Certain variable-rate transactions,* the heading is revised and paragraph 1 is revised.

N. Under *Section 226.20—Subsequent Disclosure Requirements:*

i. *20(a) Refinancings* is redesignated *20(a)(2), Refinancings by the same creditor—Non-mortgage credit,* and revised.

ii. *20(a) Modifications to terms by the same creditor, 20(a)(1) Mortgages* is added;

iii. *20(a) Modifications to terms by the same creditor, 20(a)(3) Unearned finance charge* is added;

iv. *20(c) Rate adjustments,* paragraphs 1 and 2 are revised, paragraph 3 is republished, and paragraph 4 is added;

v. *20(c)(1) Timing of disclosures, Paragraph 20(c)(2)(ii), Paragraph 20(c)(2)(iv), Paragraph 20(c)(2)(vi), Paragraph 20(c)(2)(vii), Paragraph 20(c)(3)(iii)* and *Paragraph 20(c)(3)(v)* are republished.

O. Under *Section 226.22—Determination of the Annual Percentage Rate, 22(a) Accuracy of the annual percentage rate:*

i. *Paragraph 22(a)(1)* is revised;

ii. *Paragraph 22(a)(2),* the heading and paragraph 1 are revised;

iii. *Paragraph 22(a)(3),* the heading and paragraph 1 are revised;

iv. *Paragraph 22(a)(4) Mortgage loans* is revised.

v. *Paragraph 22(a)(5)* is revised.

P. Under *Section 226.23—Right of Rescission:*

i. *23(a) Consumer's right to rescind* is revised;

ii. *23(b) Notice of the right to rescind* is revised;

iii. *23(c) Delay of creditor's performance* is revised;

iv. *23(d) Effects of rescission* is revised;

v. *23(e) Consumer's waiver of right to rescind* is revised;

vi. *23(f) Exempt transactions* is revised;

vii. *23(g) Tolerances for accuracy* is removed;

viii. *23(h) Special rules for foreclosures* is redesignated as *23(g) Special rules for foreclosures* and revised.

Q. Under *Section 226.31—General Rules:*

i. *31(c) Timing of disclosure, 31(c)(1) Disclosures for certain closed-end home mortgages, Paragraph 31(c)(1)(iii)* is revised and *31(c)(2) Disclosures for reverse mortgages* is removed;

iii. *31(d) Basis of disclosures and use of estimates,* paragraph 2 is added.

R. Under *Section 32—Requirements for Certain Closed-End Home Mortgages:*

i. *32(a) Coverage, Paragraph 32(a)(1)(ii),* paragraph 1 is revised;

ii. *Paragraph 32(a)(2)(ii)* is added;

iii. *32(b) Definitions,* new heading *Paragraph 32(b)(1)* is added;

iv. *32(b) Definitions, Paragraph 32(b)(1)(i), Paragraph 32(b)(1)(ii), Paragraph 32(b)(1)(iii),* and *Paragraph 32(b)(1)(iv)* are revised.

S. *Section 226.33—Requirements for Reverse Mortgages* is revised.

T. Under *Section 226.34—Prohibited Acts or Practices in Connection with Credit Subject to § 226.32, 34(a) Prohibited acts or practices for loans subject to § 226.32, 34(a)(4) Repayment ability,* paragraph 4 is removed and reserved, and *34(a)(4)(iv) Exclusions from presumption of compliance,* paragraph 3 is added.

U. Under *Section 226.35—Prohibited Acts or Practices in Connection With Higher-Priced Mortgage Loans:*

i. *35(a) Higher-priced mortgage loans, Paragraph 35(a)(2),* the heading is revised;

ii. *35(a) Higher-priced mortgage loans, Paragraph 35(a)(2), Paragraph 35(a)(2)(i)* is revised;

iii. *35(a) Higher-priced mortgage loans, Paragraph 35(a)(2),* new heading *35(a)(2)(ii)* is added;

iv. *35(a) Higher-priced mortgage loans, Paragraph 35(a)(3)* is added;

v. *35(b) Rules for higher-priced mortgage loans,* paragraph 1 is revised.

V. Under *Section 226.38—Content of Disclosures for Closed-End Mortgages:*

i. *38(a) Loan summary, 38(a)(5) Prepayment penalty,* paragraph 2 is revised;

ii. *38(h) Credit insurance and debt cancellation coverage and debt suspension coverage* is revised.

W. *Section 226.40—Prohibited Acts or Practices in Connection with Reverse Mortgages* is added.

X. *Section 226.41—Servicer's Response to Borrower's Request for Information* is added.

Y. Under Appendices G and H—Open-End and Closed-End Model Forms and Clauses, paragraph 1 is revised.

Z. Appendix G to Part 226 is amended by revising paragraph 4.

AA. Appendix H to Part 226 is amended by revising paragraphs 1, 3, 11, and 12.

BB. Appendix K to Part 226—Total Annual Loan Cost Rate Computations for Reverse Mortgage Transactions Model Forms and Clauses is redesignated as Reverse Mortgage Model Forms and Clauses and revised.

CC. Appendix L—Assumed Loan Periods for Computations of Total Annual Loan Cost Rates is removed and reserved.

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart A—General

Section 226.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability

* * * * *

1(d) Organization.

* * * * *

Paragraph 1(d)(5).

1. *Effective dates.* The Board's revisions to Regulation Z published on July 30, 2008 (the "final rules") apply to covered loans (including 【refinance loans】►modifications◄ and assumptions considered new transactions under § 226.20►(a)(1)(i) or (b)◄ for which the creditor receives an application on or after October 1, 2009, except for the final rules on advertising, escrows, and loan servicing. *But see* comment 1(d)(3)–1. The final rules on escrows in § 226.35(b)(3) are effective for covered loans (including [refinances] ►modifications◄ and assumptions in § 226.20►(a)(1)(i) and (b)◄) for which the creditor receives an application on or after April 1, 2010; but for such loans secured by manufactured housing on or after October 1, 2010. The final rules applicable to servicers in § 226.36(c) apply to all covered loans serviced on or after October 1, 2009. The final rules on advertising apply to advertisements occurring on or after October 1, 2009. For example, a radio ad occurs on the date it is 【first】 broadcast; a solicitation occurs on the date it is mailed to the consumer. The following examples illustrate the application of the effective dates for the final rules.

i. *General.* A 【refinancing】 ►modification◄ [or assumption] as defined in § 226.20(a)►(1)(i)◄ or ►assumption as defined in § 226.20(b)◄ is a new transaction and is covered by a provision of the final rule if the creditor receives an application for the transaction on or after that provision's effective date. For example, if a creditor receives an application for a [refinance loan] ►modification◄ covered by § 226.35(a) on or after October 1, 2009, and the [refinance loan] ►modification◄ is consummated on October 15, 2009, the provision restricting prepayment penalties in § 226.35(b)(2) applies. However, if the transaction were a modification of an existing obligation's terms that does not [constitute a refinance loan] ► result in a new transaction as provided◄ under § 226.20(a)►(1)(ii)◄, the final rules, including for example the restriction on prepayment penalties, would not apply.

* * * * *

Section 226.2—Definitions and Rules of Construction

2(a) Definitions.

* * * * *

2(a)(6) Business day.

* * * * *

2. *Rule for rescission, disclosures for certain mortgage ►and home-equity line of credit◄ transactions, and private education loans►, and the restriction on imposing nonrefundable fees in connection with reverse mortgages subject to § 226.33◄.* A more precise rule for what is a business day (all calendar days except Sundays and the Federal legal holidays specified in 5 U.S.C. 6103(a)) applies when the right of rescission, the receipt of disclosures for certain 【dwelling-secured】 mortgage transactions under §§ ►226.5b(e), 226.9(j)(2),◄ 226.19(a)(1)(ii), 226.19(a)(2), 226.31(c), ►226.33(d)(1)(ii), 226.33(d)(2),◄ 【or 】the receipt of disclosures for private education loans under § 226.46(d)(4)►, the restriction on imposing nonrefundable fees for certain mortgage transactions under § 226.19(a)(1)(iv), or the restriction on

imposing nonrefundable fees under § 226.40(b)(2) in connection with reverse mortgages subject to § 226.33◀ is involved. Four Federal legal holidays are identified in 5 U.S.C. 6103(a) by a specific date: New Year's Day, January 1; Independence Day, July 4; Veterans Day, November 11; and Christmas Day, December 25. When one of these holidays (July 4, for example) falls on a Saturday, Federal offices and other entities might observe the holiday on the preceding Friday (July 3). In cases where the more precise rule applies, the observed holiday (in the example, July 3) is a business day.

* * * * *

2(a)(11) Consumer.

1. *Scope.* i. Guarantors, endorsers, and sureties are not generally consumers for the purposes of the regulation, but ⟦they⟧ ▶such parties◀ may be entitled to rescind under ▶the following◀⟦certain⟧ circumstances ⟦and they may⟧:

▶A. The borrower has the right to rescind because he or she is a natural person to whom consumer credit is offered or extended and in whose principal dwelling a security interest is or will be retained or acquired; and

B. The guarantor, endorser, or surety personally guarantees the borrower's repayment of the consumer credit transaction and pledges his or her principal dwelling as security for the borrower's consumer credit transaction.

ii. Guarantors, endorsers, or sureties may also◀ have certain rights if they are obligated on credit card plans.

* * * * *

3. *Land trusts* ▶*and revocable living trusts*◀. Credit extended to land trusts ▶or revocable living trusts◀, as described in the commentary to § 226.3(a), is considered to be extended to a natural person for purposes of the definition of consumer.

▶4. *Reverse mortgages subject to § 226.33.* For purposes of the counseling requirements under § 226.40(b) for reverse mortgages subject to § 226.33, with one exception, a consumer includes any person who, at the time of origination of a reverse mortgage subject to § 226.33, will be shown as an owner on the property deed of the dwelling that will secure the applicable reverse mortgage. *See* § 226.40(b)(7). For purposes of the prohibition on imposing nonrefundable fees in connection with a reverse mortgage transaction until after the third business day following the consumer's completion of counseling (§ 226.40(b)(2)), however, the term consumer includes only persons on the property deed who will be obligors on the applicable reverse mortgage.◀

* * * * *

2(a)(25) Security interest.

* * * * *

6. *Specificity of disclosure.* A creditor need not separately disclose multiple security interests that it may hold in the same collateral. The creditor need only disclose that the transaction is secured by the collateral, even when security interests from prior transactions remain of record and a new security interest is taken in connection with the transaction. In disclosing the fact that the transaction is secured by the collateral, the creditor also need not disclose how the security interest arose. For example, in a closed-end credit transaction, a ⟦rescission⟧ notice need not specifically state that a new security interest is "acquired" or an existing security interest is "retained" in the transaction. ⟦The acquisition or retention of a security interest in the consumer's principal dwelling instead may be disclosed in a rescission notice with a general statement such as the following: "Your home is the security for the new transaction."⟧

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Section 226.3—Exempt Transactions 3(a) Business, commercial, agricultural, or organizational credit.

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8. *Land trusts* ▶*and revocable living trusts*◀. Credit extended for consumer purposes to a land trust ▶a or revocable living trust◀ is considered to be credit extended to a natural person rather than credit extended to an organization. In some jurisdictions, ▶land trusts are established to serve a function similar to that of a mortgage between◀ a financial institution ⟦financing⟧ ▶and a natural person for the financing of◀ a residential real estate transaction⟦ for an individual uses a land trust mechanism⟧. Title to the property is conveyed to the land trust for which the financial institution itself is a trustee. ⟦The underlying installment note is executed by the financial institution in its capacity as trustee and payment is secured by a trust deed, reflecting title in the financial institution as trustee. In some instances, the consumer executes a personal guaranty of the indebtedness. The note provides that it is payable only out of the property specifically described in the trust deed and that the trustee has no personal liability on the note.⟧ ▶Revocable living trusts generally are established by a natural person to serve an estate planning function, such as avoidance of probate. The natural person often uses the revocable living trust to hold title to real and personal property.◀ Assuming the transactions are for personal, family, or household purposes, ⟦these transactions⟧ ▶extensions of credit to a land trust or a revocable living trust◀ are subject to the regulation since in substance (if not form) consumer credit is being extended.

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Section 226.4—Finance Charge

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4(a) Definition.

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4(a)(1) Charges by third parties.

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⟦2. *Annuities associated with reverse mortgages.* Some creditors offer annuities in connection with a reverse-mortgage transaction. The amount of the premium is a finance charge if the creditor requires the purchase of the annuity incident to the credit. Examples include the following:

i. The credit documents reflect the purchase of an annuity from a specific provider or providers.

ii. The creditor assesses an additional charge on consumers who do not purchase an annuity from a specific provider.

iii. The annuity is intended to replace in whole or in part the creditor's payments to the consumer either immediately or at some future date.⟧

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4(d) Insurance and debt cancellation and debt suspension coverage.

1. *General.* Section 226.4(d) permits insurance premiums and charges and debt cancellation and debt suspension charges to be excluded from the finance charge▶, except for certain transactions secured by real property or a dwelling, as provided in § 226.24(g)◀. The required disclosures must be made ▶clearly and conspicuously◀ in writing, except as provided in § 226.4(d)(4). The rules on ⟦location⟧▶the form◀ of insurance and debt cancellation and debt suspension disclosures ⟦for closed-end transactions⟧ are in §§ 226.17(a)▶ and 226.37(a)(1) for closed-end transactions and § 226.5(a)(1) for open-end transactions.◀ For purposes of § 226.4(d), all references to insurance also include debt cancellation and debt suspension coverage unless the context indicates otherwise.

2. *Timing of disclosures.* ▶Disclosures must be given before the consumer enrolls in the insurance or debt cancellation or debt suspension coverage written in connection with the credit transaction. See comments 4(b)(7) and (b)(8)–2 and 4(b)(10)–2 for a discussion of when insurance or coverage is written in connection with the credit transaction.◀ If disclosures are given early, for example under § 226.17(f) or 226.19(a), the creditor ⟦need not⟧▶must◀ redisclose if the ⟦actual premium⟧▶maximum premium or charge per period◀ is different at the time of consummation ▶or account-opening◀. If ⟦insurance⟧ disclosures are not given at the time of early disclosure and insurance ▶or debt cancellation or debt suspension coverage◀ is in fact written in connection with the transaction, the disclosures under § 226.4(d) must be made in order to exclude the premiums ▶or charges◀ from the finance charge.

3. ⟦*Premium rate*⟧▶*Rate*◀ *increases.* The creditor should disclose the premium amount ▶or charge◀ based on the rates currently in effect and need not designate it as an estimate even if the premium rates ▶or charges◀ may increase. An increase in insurance ▶or debt cancellation or debt suspension coverage◀ rates after consummation of a closed-end credit transaction or during the life of an open-end credit plan does not require redisclosure in order to exclude the additional premium ▶or charge◀ from treatment as a finance charge.

4. *Unit-cost disclosures* ▶*for property insurance*◀. i. *Open-End credit.* The premium ⟦or fee⟧ for insurance ⟦or debt cancellation or debt suspension⟧ for the initial term of coverage may be disclosed on a unit-cost basis in open-end credit transactions. The cost per unit should be based on the initial term of coverage, unless one of the options under comment 4(d)–12 is available.

ii. *Closed-end credit.* One of the transactions for which unit-cost disclosures (such as 50 cents per year for each $100 of the amount financed) may be used in place of the total insurance premium involves a particular kind of insurance plan. For example, a consumer with a current indebtedness of $8,000 is covered by a plan of 【credit life】 insurance coverage with a maximum of $10,000. The consumer requests an additional $4,000 loan to be covered by the same insurance plan. Since the $4,000 loan exceeds, in part, the maximum amount of indebtedness that can be covered by the plan, the creditor may properly give the insurance-cost disclosures on the $4,000 loan on a unit-cost basis.

5. *Required credit life insurance or debt cancellation or suspension coverage.* Credit life, accident, health, or loss-of-income insurance ►described in § 226.4(b)(7)◄, and debt cancellation and suspension coverage described in § 226.4(b)(10), must be voluntary in order for the premium or charges to be excluded from the finance charge ►(except that, as provided in § 226.4(g), even charges for voluntary insurance or coverage may not be excluded) ◄. Whether the insurance or coverage is in fact required or optional is a factual question. If the insurance or coverage is required, the premiums ►or charges◄ must be included in the finance charge, whether the insurance or coverage is purchased from the creditor or from a third party. If the consumer is required to elect one of several options—such as to purchase credit life insurance, or to assign an existing life insurance policy, or to pledge security such as a certificate of deposit—and the consumer purchases the credit life insurance policy, the premium must be included in the finance charge. (If the consumer assigns a preexisting policy or pledges security instead, no premium is included in the finance charge. The security interest would be disclosed under § 226.6(a)(4), § 226.6(b)(5)(ii), or § 226.18(m). See the commentary to § 226.4(b)(7) and (b)(8).)

6. *Other types of voluntary insurance.* Insurance is not credit life, accident, health, or loss-of-income insurance if the creditor or the credit account of the consumer is not the beneficiary of the insurance coverage. If the premium for such insurance is not imposed by the creditor 【as an incident to or a condition of credit】►in connection with the credit transaction◄, it is not covered by § 226.4.

7. *Signatures.* If the creditor offers a number of insurance ►or debt cancellation or debt suspension coverage◄ options under § 226.4(d), the creditor may provide a means for the consumer to sign or initial for each option, or it may provide for a single authorizing signature or initial with the options selected designated by some other means, such as a check mark. The 【insurance】 authorization may be signed or initialed by any consumer, as defined in § 226.2(a)(11), or by an authorized user on a credit card account.

8. *Property insurance.* To exclude property insurance premiums or charges from the finance charge, the creditor must allow the consumer to choose the insurer and disclose that fact. This disclosure must be made whether or not the property insurance is available from or through the creditor. The requirement that an option be given does not require that the insurance be readily available from other sources. The premium 【or charge】 must be disclosed only if the consumer elects to purchase the insurance from ►or through◄ the creditor; in such a case, the creditor must also disclose the term of the property insurance coverage if it is less than the term of the obligation. ►Insurance is available "from or through" a creditor if it is available from the creditor's affiliate, as defined under the Bank Holding Company Act, 12 U.S.C. 1841(k).◄

9. *Single-interest insurance.* Blanket and specific single-interest coverage are treated the same for purposes of the regulation. A charge for either type of single-interest insurance may be excluded from the finance charge if:

i. The insurer waives any right of subrogation.

ii. The other requirements of § 226.4(d)(2) are met. This includes, of course, giving the consumer the option of obtaining the insurance from a person of the consumer's choice. The creditor need not ascertain whether the consumer is able to purchase the insurance from someone else.

10. *Single-interest insurance defined.* The term *single-interest insurance* as used in the regulation refers only to the types of coverage traditionally included in the term *vendor's single-interest insurance* (or *VSI*), that is, protection of tangible property against normal property damage, concealment, confiscation, conversion, embezzlement, and skip. Some comprehensive insurance policies may include a variety of additional coverages, such as repossession insurance and holder-in-due-course insurance. These types of coverage do not constitute single-interest insurance for purposes of the regulation, and premiums for them do not qualify for exclusion from the finance charge under § 226.4(d). If a policy that is primarily VSI also provides coverages that are not VSI or other property insurance, a portion of the premiums must be allocated to the nonexcludable coverages and included in the finance charge. However, such allocation is not required if the total premium in fact attributable to all of the non-VSI coverages included in the policy is $1.00 or less (or $5.00 or less in the case of a multiyear policy).

11. *Initial term ►for property insurance◄.*

i. The initial term of ►property◄ insurance 【or debt cancellation or debt suspension coverage】 determines the period for which a premium amount must be disclosed, unless one of the options discussed under comment 4(d)–12 is available. For purposes of § 226.4(d), the initial term is the period for which the insurer or creditor is obligated to provide coverage, even though the consumer may be allowed to cancel the coverage or coverage may end due to nonpayment before that term expires.

ii. For example:

A. The initial term of a property insurance policy on an automobile that is written for one year is one year even though premiums are paid monthly and the term of the credit transaction is four years.

B. The initial term of an insurance policy is the full term of the credit transaction if the consumer pays or finances a single premium in advance.

12. *Initial term; alternative.*

i. *General.* A creditor has the option of providing cost disclosures on the basis of one year of ►property◄ insurance 【or debt cancellation or debt suspension coverage】 instead of a longer initial term (provided the premium 【or fee】 is clearly labeled as being for one year) if:

A. The initial term is indefinite or not clear, or

B. The consumer has agreed to pay a premium 【or fee】 that is assessed periodically but the consumer is under no obligation to continue the coverage, whether or not the consumer has made an initial payment.

ii. *Open-End plans.* For open-end plans, a creditor also has the option of providing unit-cost disclosure on the basis of a period that is less than one year if the consumer has agreed to pay a premium 【or fee】 that is assessed periodically, for example monthly, but the consumer is under no obligation to continue the coverage.

iii. *Examples.* To illustrate:

A. A 【credit life insurance】 policy providing coverage for a 【30-year mortgage】►seven-year automobile◄ loan has an initial term of 【30】►seven◄ years, even though premiums are paid monthly and the consumer is not required to continue the coverage. Disclosures may be based on the initial term, but the creditor also has the option of making disclosures on the basis of coverage for an assumed initial term of one year.

13. *Loss-of-income insurance.* The loss-of-income insurance mentioned in § 226.4(d) includes involuntary unemployment insurance, which provides that some or all of the consumer's payments will be made if the consumer becomes unemployed involuntarily.

►14. *Age or employment eligibility criteria.* A premium or charge for credit life, accident, health, or loss-of-income insurance, or debt cancellation or debt suspension coverage is voluntary and can be excluded from the finance charge only if the consumer meets the product's age or employment eligibility criteria prior to or at the time of enrollment in the product. To exclude such a premium or charge from the finance charge, the creditor must determine prior to or at the time of enrollment that the consumer is eligible for the product as of enrollment under the product's age or employment eligibility restrictions. The creditor may use reasonably reliable evidence of the consumer's age or employment status to satisfy this condition. Reasonably reliable evidence of a consumer's age would include using the date of birth on the consumer's credit application, on the driver's license or other government-issued identification, or on the credit report. Reasonably reliable evidence of a consumer's employment status would include the consumer's information on a credit application, an Internal Revenue Service Form W–2, tax returns, payroll receipts, or other evidence such as a letter or e-mail from the consumer or the consumer's employer. If the consumer does not meet the product's age or employment eligibility criteria at the time of enrollment, then the premium or charge is not voluntary. In such circumstances, the premium or charge is a finance charge. If the creditor offers a bundled product (such as credit life insurance combined with credit involuntary unemployment insurance) and the consumer is not eligible for all of the bundled products, the creditor must either: (1) Treat the entire premium or charge for the bundled product as a finance charge, or (2) offer the consumer the option of selecting only the products for which the consumer is eligible and exclude the premium or charge from the finance charge if the consumer chooses an optional product for which the consumer meets the age or employment eligibility criteria prior to or at the time of enrollment.

15. *Covered event.* The term "covered event" in § 226.4(d)(1)(i)(D)(*1*) refers to the event that would trigger coverage under the policy or agreement, such as loss of life, disability, or involuntary unemployment.

16. *Cost disclosures for credit insurance or debt cancellation or debt suspension coverage.* To comply with the disclosure requirements of § 226.4(d)(1)(i)(D)(*3*), the creditor must disclose the maximum premium or charge per period. The creditor must use the maximum rate under the policy or coverage. If the premium or charge is based on the outstanding balance or periodic principal and interest payment, the creditor must base the disclosure on the maximum outstanding balance or periodic principal and interest payment possible under the loan contract or line of credit plan.◄

4(d)(3) Voluntary debt cancellation or debt suspension fees.

1. *General.* Fees charged for the specialized form of debt cancellation agreement known as guaranteed automobile protection ("GAP") agreements must be disclosed according to § 226.4(d)(3) rather than according to § 226.4(d)(2) for property insurance.

2. *Disclosures.* Creditors can comply with § 226.4(d)(3) by providing a disclosure that refers to debt cancellation or debt suspension coverage whether or not the coverage is considered insurance. Creditors may use the model credit insurance disclosures only if the debt cancellation or debt suspension coverage constitutes insurance under State law. (See Model 【Clauses】►Forms◄ and Samples at G–16►(A) and (D)◄ and H–17►(A) and (D)◄ in appendix G and appendix H to part 226 for guidance on how to provide the disclosure required by § 226.4(d)(3)【(iii)】►(i)◄ for debt suspension products.)

3. *Multiple events.* If debt cancellation or debt suspension coverage for two or more events is provided at a single charge, the entire charge may be excluded from the finance charge if at least one of the events is accident or loss of life, health, or income and the conditions specified in § 226.4(d)(3) or, as applicable, § 226.4(d)(4), are satisfied.

4. *Disclosures in programs combining debt cancellation and debt suspension features.* If the consumer's debt can be cancelled under certain circumstances, the disclosure may be modified to reflect that fact. The disclosure could, for example, state (in addition to the language required by § 226.4(d)(3)【(iii)】►(i)◄) that "In some circumstances, 【my】►your◄ debt may be cancelled." However, the disclosure would not be permitted to list the specific events that would result in debt cancellation.

4(d)(4) Telephone purchases.

1. *Affirmative request.* A creditor would not satisfy the requirement to obtain a consumer's affirmative request if the "request" was a response to a script that uses leading questions or negative consent. A question asking whether the consumer wishes to enroll in the credit insurance or debt cancellation or suspension plan and seeking a yes-or-no response (such as "Do you want to enroll in this optional debt cancellation plan?") would not be considered leading.

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Subpart B—Open-End Credit

Section 226.5—General Disclosure Requirements

5(a) Form of disclosures.

5(a)(1) General.

1. *Clear and conspicuous standard.* The "clear and conspicuous" standard generally requires that disclosures be in a reasonably understandable form. Disclosures for credit card applications and solicitations under § 226.5a, ►disclosures for home-equity plans required three business days after application under § 226.5b(b) and § 226.33(d)(1),◄ highlighted account-opening disclosures under ►§ 226.6(a)(1),◄ § 226.6(b)(1), ►and § 226.33(d)(4),◄ highlighted disclosure on checks that access a credit card under § 226.9(b)(3), highlighted change-in-terms disclosures under ►§ 226.9(c)(1)(iii)(B) and◄ § 226.9(c)(2)(iii)(B), and highlighted disclosures when a rate is increased due to delinquency, default or ►otherwise as◄ [for] a penalty under § 226.9(g)(3)(ii) ►and § 226.9(i)(4)◄ must also be readily noticeable to the consumer ►to meet the "clear and conspicuous" standard◄.

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3. *Clear and conspicuous—readily noticeable standard.* To meet the readily noticeable standard, disclosures for credit card applications and solicitations under § 226.5a, ►disclosures for home-equity plans required three business days after application under § 226.5b(b) and § 226.33(d)(1),◄ highlighted account-opening disclosures under ►§ 226.6(a)(1),◄ § 226.6(b)(1), ►and § 226.33(d)(4),◄ highlighted disclosures on checks that access a credit card account under § 226.9(b)(3), highlighted change-in-terms disclosures under ►§ 226.9(c)(1)(iii)(B) and◄ § 226.9(c)(2)(iii)(B), and highlighted disclosures when a rate is increased due to delinquency, default or penalty pricing under § 226.9(g)(3)(ii) ►and § 226.9(i)(4)◄ must be given in a minimum of 10-point font. (See special rule for font size requirements for the annual percentage rate for purchases ►in an open-end (not home-secured) plan◄ under §§ 226.5a(b)(1) and 226.6(b)(2)(i) ►, and for the annual percentage rate in a home-equity plan under §§ 226.5b(c)(10), 226.6(a)(2)(vi), and 226.33(c)(6)(i)◄.)

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5(b) Time of disclosures.

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5(b)(1) Account-opening disclosures.

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5(b)(1)(ii) Charges imposed as part of an open-end [(not home-secured)] plan.

1. *Disclosing charges before the fee is imposed.* Creditors may disclose charges imposed as part of an open-end [(not home-secured)] plan orally or in writing at any time before a consumer agrees to pay the fee or becomes obligated for the charge, unless the charge is specified under ►§ 226.6(a)(2),◄ § 226.6(b)(2) ►, or § 226.33(c)◄. (Charges imposed as part of an open-end 【(not home-secured)】 plan that are not specified under ►§ 226.6(a)(2),◄ § 226.6(b)(2)►, or § 226.33(c)◄ may alternatively be disclosed in electronic form; see the commentary to § 226.5(a)(1)(ii)(A).) Creditors must provide such disclosures at a time and in a manner ►such◄ that a consumer would be likely to notice them. For example, if a consumer telephones a ►creditor◄ 【card issuer】 to discuss a particular service, a creditor would meet the standard if the creditor clearly and conspicuously discloses the fee associated with the service that is the topic of the telephone call orally to the consumer. Similarly, a creditor providing marketing materials in writing to a consumer about a particular service would meet the standard if the creditor provided a clear and conspicuous written disclosure of the fee for that service in those same materials. A creditor that provides written materials to a consumer about a particular service but provides a fee disclosure for another service not promoted in such materials would not meet the standard. For example, if a creditor provided marketing materials promoting payment by Internet, but included the fee for a replacement card on such materials with no explanation, the creditor would not be disclosing the fee at a time and in a manner that the consumer would be likely to notice the fee.

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Section 226.5b–Requirements for Home-Equity Plans

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5b(c) Content of disclosures.

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5b(c)(9) Payment terms.

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Paragraph 5b(c)(9)(ii).

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[6. *Reverse mortgages.* Reverse mortgages, also known as reverse annuity or home-equity conversion mortgages, in addition to permitting the consumer to obtain advances, may involve the disbursement of monthly advances to the consumer for a fixed period or until the occurrence of an event such as the consumer's death. Repayment of the reverse mortgage (generally a single payment of principal and accrued interest) may be required to be made at the end of the disbursements or, for example, upon the death of the consumer. In disclosing these plans, creditors must apply the following rules, as applicable:

i. If the reverse mortgage has a specified period for advances and disbursements but repayment is due only upon occurrence of a future event such as the death of the consumer, the creditor must assume that disbursements will be made until they are scheduled to end. The creditor must assume repayment will occur when disbursements end (or within a period following the final disbursement which is not longer than the regular interval between disbursements). This assumption should be used even though repayment may occur before or after the disbursements are scheduled to end. In such cases, the creditor may include a statement such as "The disclosures assume that you will repay the line at the time the borrowing period and our payments to you end. As provided in your agreement, your repayment may be required at a different time." The single payment should be considered the "minimum periodic payment" and consequently would not be treated as a balloon payment. The examples of the minimum payment under § 226.5b(c)(9)(iii) should assume the consumer borrows the full credit line (as disclosed in § 226.5b(c)(17)) at the beginning of the draw period.

ii. If the reverse mortgage has neither a specified period for advances or disbursements nor a specified repayment date and these terms will be determined solely by reference to future events, including the consumer's death, the creditor may assume that the draws and disbursements will end upon the consumer's death (estimated by using actuarial tables, for example) and that repayment will be required at the same time (or within a period following the date of the final disbursement which is not longer than the regular interval for disbursements). Alternatively, the creditor may base the disclosures upon another future event it estimates will be most likely to occur first. (If terms will be determined by reference to future events which do not include the consumer's death, the creditor must base the disclosures upon the occurrence of the event estimated to be most likely to occur first.)

iii. In making the disclosures, the creditor must assume that all draws and disbursements and accrued interest will be paid by the consumer. For example, if the note has a non-recourse provision providing that the consumer is not obligated for an amount greater than the value of the house, the creditor must nonetheless assume that the full amount to be drawn or disbursed will be repaid. In this case, however, the creditor may include a statement such as "The disclosures assume full repayment of the amount advanced plus accrued interest, although the amount you may be required to pay is limited by your agreement."

iv. Some reverse mortgages provide that some or all of the appreciation in the value of the property will be shared between the consumer and the creditor. The creditor must disclose the appreciation feature, including describing how the creditor's share will be determined, any limitations, and when the feature may be exercised.]

Paragraph 5b(c)(9)(iii).

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⟦3. *Reverse mortgages.* See comment 5b(c)(9)(ii)–6 for guidance on providing the payment examples required under § 226.5b(c)(9)(iii) for reverse mortgages.⟧

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5b(d) Refund of fees.

1. *Refund of fees required.* If any disclosed term, including any term provided upon request pursuant to § 226.5b(c)►or § 226.33(c)(7)(iv)◄, changes between the time the early disclosures are provided to the consumer and the time the plan is opened, and the consumer decides to not enter into the plan, a creditor must refund all fees paid by the consumer. All fees, including credit-report fees and appraisal fees, must be refunded whether such fees are paid to the creditor or directly to third parties. A consumer is entitled to a refund of fees under these circumstances whether or not terms are guaranteed by the creditor under § 226.5b (c)(4)(i) ►or 226.33(c)(12)(iii)◄.

2. *Changes not requiring refund.* The right to a refund of fees does not apply to changes in the annual percentage rate resulting from fluctuations in the index value in a variable-rate plan. Also, if the maximum annual percentage rate is an amount over the initial rate, the right to refund of fees would not apply to changes in the cap resulting from fluctuations in the index value. ►In addition, the right to a refund does not apply to changes to the disclosures required by § 226.33(c)(3), (c)(5) or (c)(8) due to changes in the type of payment the consumer receives, or verification of the appraised property value or the consumer's age. For example, if the disclosure is based on the consumer's choice to receive only monthly payments, and after the disclosure is provided, the consumer decides instead to receive funds in the form of a line of credit, the creditor would not be required to refund the consumer's fees if the consumer later decides not to proceed with the reverse mortgage.◄

3. *Changes in terms.* If a term, such as a fee, is stated as a range in the early disclosures required under § 226.5b(b) ►or 226.33(d)(1)◄, and the term ultimately applicable to the plan falls within that range, a change does not occur for purposes of this section. If, however, no range is used and the term is changed (for example, a rate cap of 6 rather than 5 percentage points over the initial rate), the change would permit the consumer to obtain a refund of fees. If a fee imposed by the creditor is stated in the early disclosures as an estimate and the fee changes, the consumer could elect to not enter into the agreement and would be entitled to a refund of fees.

4. *Timing of refunds and relation to other provisions.* The refund of fees must be made as soon as reasonably possible after the creditor is notified ►,after a term has changed,◄ that the consumer is not entering into the plan [because of the changed term,] or that the consumer wants a refund of fees. The fact that an application fee may be refunded to some applicants under this provision does not render such fees finance charges under section 226.4(c)(1) of the regulation.

5b⟦*(h)*⟧►*(e)*◄ *Imposition of nonrefundable fees.*

1. *Collection of fees after consumer receives disclosures.* A fee may be collected after the consumer receives the disclosures ►required under § 226.5b(e) or 226.33(d)(1)◄ [and brochure] and before the expiration of three ►business◄ days, although the fee must be refunded if, within three ►business◄ days of receiving the required information, the consumer decides not to enter into the agreement. In such a case, the consumer must be notified that the fee is refundable for three ►business◄ days. The notice must be clear and conspicuous and in writing, and ►must ◄ [may] be included with the disclosures required under § 226.5b[(d)]►(b) or § 226.33(d)(1)◄ [or as an attachment to them]. If disclosures ►required under § 226.5b(b) or § 226.33(d)(1)◄ [and brochure] are mailed to the consumer, [footnote 10d of] the regulation provides that a nonrefundable fee may not be imposed until six business days after the mailing.

2. *Collection of fees before consumer receives disclosures.* An application fee may be collected before the consumer receives the disclosures ►required under § 226.5b(b) or 226.33(d)(1)◄ [and brochure] (for example, when an application contained in a magazine is mailed in with an application fee) provided that [it] ►the fee◄ remains refundable until three business days after the consumer receives the § 226.5b►(b) or 226.33(d)(1)◄ disclosures. No other fees except a refundable membership fee may be collected until after the consumer receives the disclosures required under § 226.5b►(b) or 226.33(d)(1)◄.

3. *Relation to other provisions.* A fee collected before disclosures ►required under § 226.5b(b) or 226.33(d)(1)◄ are provided may become nonrefundable except that, under § 226.5b(g), it must be refunded if ►a term changes and◄ the consumer elects not to enter into the plan [because of a change in terms]. (Of course, all fees must be refunded if the consumer later rescinds under § 226.15.)

►4. *Definition of* "*Business Day*". For purposes of § 226.5b(e), the more precise definition of business day (meaning all calendar days except Sundays and specified Federal holidays) under § 226.2(a)(6) applies. *See* comment 2(a)(6)–2.

5. *Reverse mortgages subject to § 226.33.* For reverse mortgages subject to §§ 226.5b and 226.33, creditors and other persons must also comply with the restriction on imposing a nonrefundable fee in § 226.40(b)(2). *See* comment 40(b)(2)(i)–3.◄

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Section 226.6—Account-Opening Disclosures

6(a) Rules affecting home-equity plans.

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►3. *Reverse mortgages.* Open-end reverse mortgages that are subject to § 226.5b are not subject to the account-opening disclosure requirements in § 226.6(a)(1) and (a)(2), but rather are subject to the account-opening disclosure requirements in § 226.33(c) and (d)(2). Open-end reverse mortgages are also subject to § 226.6(a)(3), (a)(4), and (a)(5)(ii) through (iv).◄

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Section 226.9—Subsequent Disclosure Requirements

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9(c) Change in terms.

9(c)(1) Rules affecting home equity plans.

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►*9(c)(1)(ii) Charges not covered by § 226.6(a)(1) and (a)(2) or § 226.33.*

1. *Applicability.* Generally, if a creditor increases any component of a charge, or introduces a new charge (assuming in either case that such action is permitted under § 226.5b(f)), that is imposed as part of the plan under § 226.6(a)(3) but is not required to be disclosed as part of the account-opening summary table under § 226.6(a)(2) or § 226.33(d)(4), the creditor may either, at its option, provide at least 45 days' written advance notice before the change becomes effective to comply with the requirements of § 226.9(c)(1)(i), or provide notice orally or in writing, or electronically if the consumer requests the service electronically, of the amount of the charge to an affected consumer before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure. (See the commentary under § 226.5(a)(1)(iii) regarding disclosure of such changes in electronic form.) For example, a fee for expedited delivery of a credit card is a charge imposed as part of the plan under § 226.6(a)(3) but is not required to be disclosed in the account-opening summary table under § 226.6(a)(2) or § 226.33(d)(4). If a creditor adds expedited delivery of a credit card as a new service, the new service and the accompanying fee would be permissible under § 226.5b(f)(3)(iv) as a beneficial change. In these circumstances, the creditor may provide written advance notice of the change to affected consumers at least 45 days before the change becomes effective. Alternatively, the creditor may provide oral or written notice, or electronic notice if the consumer requests the service electronically, of the amount of the charge to an affected consumer before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that the consumer would be likely to notice the disclosure. (See comment 5(b)(1)(ii)–1 for examples of disclosures given at a time and in a manner such that the consumer would be likely to notice them.)

9(c)(1)(iii) Disclosure requirements.

9(c)(1)(iii)(A) Changes to terms described in account-opening table.◄

* * * * *

►2. *Changing index for calculating a variable rate.* If the creditor is changing the index pursuant to § 226.5b(f)(3)(ii), the creditor must disclose the amount of the new rate (as calculated using the new index) and indicate that the rate varies and the how the rate is determined, as explained in § 226.6(a)(2)(vi)(A) or § 226.33(c)(6)(i)(A). For example, if a creditor is changing from using a prime rate to using the LIBOR in calculating a variable rate, the creditor would disclose in the table the new rate (using the new index) and indicate that the rate varies with the market based on the LIBOR.◄

* * * * *

►6. *Changes in fees.* If a creditor is changing part of how a fee that is disclosed in a tabular format under § 226.6(a)(2) or § 226.33(d)(4) is determined, the creditor must redisclose all relevant information related to that fee regardless of whether this other information is changing. For example, if a creditor currently charges a cash advance fee of "Either $5 or 3% of the transaction amount, whichever is greater. (Max: $100)," and the creditor is only changing the minimum dollar amount from $5 to $10, the issuer must redisclose the other information related to how the fee is determined. The creditor in this example would disclose the following: "Either $10 or 3% of the transaction amount, whichever is greater. (Max: $100)." (See § 226.5b(f) for restrictions on a creditor's right to change terms.)◄

* * * * *

Section 226.15—Right of Rescission

1. *Transactions not covered.* Credit extensions that are not subject to the regulation are not covered by § 226.15 even if the customer's principal dwelling is the collateral securing the credit. For this purpose, *credit extensions* also would include the ►transactions◄ [occurrences] listed in comment 15(a)(1)–1. For example, the right of rescission does not apply to the opening of a business-purpose credit line, even though the loan is secured by the customer's principal dwelling.

15(a) Consumer's right to rescind.

[*Paragraph*] *15(a)(1)* ►*Coverage*◄.

1. ►*Transactions*◄ [*Occurrences*] *subject to right.* Under an open-end credit plan secured by the consumer's principal dwelling, the right of rescission generally arises with each of the following ►transactions◄[occurrences]:

►i.◄[•] Opening the account.

►ii.◄[•] Each credit extension.

►iii.◄[•] Increasing the credit limit.

►iv.◄[•] Adding to an existing account a security interest in the consumer's principal dwelling.

►v.◄[•] Increasing the dollar amount of the security interest taken in the dwelling to secure the plan. For example, a consumer may open an account with a $10,000 credit limit, $5,000 of which is initially secured by the consumer's principal dwelling. The consumer has the right to rescind at that time and (except as noted in § 226.15(a)(1)(ii)) with each extension on the account. Later, if the creditor decides that it wants the credit line fully secured, and increases the amount of its interest in the consumer's dwelling, the consumer has the right to rescind the increase.

2. *Exceptions.* Although the consumer generally has the right to rescind with each transaction on the account, section 125(e) of the Act provides an exception: the creditor need not provide the right to rescind at the time of each credit extension made under an open-end credit plan secured by the consumer's principal dwelling to the extent that the credit extended is in accordance with a previously established credit limit for the plan. This limited rescission option is available whether or not the plan existed prior to the effective date of the Act.

3. *Security interest arising from transaction.* ►i.◄ In order for the right of rescission to apply, the security interest must be retained as part of the credit transaction. For example:

[•]►A.◄ A security interest that is acquired by a contractor who is also extending the credit in the transaction.

[•]►B.◄ A mechanic's or materialman's lien that is retained by a subcontractor or supplier of a contractor-creditor, even when the latter has waived its own security interest in the consumer's home.

►ii.◄ The security interest is not part of the credit transaction, and therefore the transaction is not subject to the right of rescission when, for example:

[•]►A.◄ A mechanic's or materialman's lien is obtained by a contractor who is not a party to the credit transaction but merely is paid with the proceeds of the consumer's cash advance.

[•]►B.◄ All security interests that may arise in connection with the credit transaction are validly waived.

[•]►C.◄ The creditor obtains a lien and completion bond that in effect satisfies all liens against the consumer's principal dwelling as a result of the credit transaction.

►iii.◄ Although liens arising by operation of law are not considered security interests for purposes of disclosure under § 226.2, that section specifically includes them in the definition for purposes of the right of rescission. Thus, even though an interest in the consumer's principal dwelling is not a required disclosure under [§ 226.6(c)]►§ 226.6(a)(5)(ii)◄, it may still give rise to the right of rescission.

4. *Consumer.* To be a consumer within the meaning of § 226.2, that person must at least have an ownership interest in the dwelling that is encumbered by the creditor's security interest, although that person need not be a signatory to the credit agreement. For example, if only one spouse enters into a secured plan, the other spouse is a consumer if the ownership interest of that spouse is subject to the security interest.

5. *Principal dwelling.* A consumer can only have one principal dwelling at a time. (But see comment 15(a)(1)–6.) A vacation or other second home would not be a principal dwelling. A transaction secured by a second home (such as a vacation home) that is not currently being used as the consumer's principal dwelling is not rescindable, even if the consumer intends to reside there in the future. When a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within one year or upon completion of construction, the new dwelling is considered the principal dwelling if it secures the open-end credit line. In that case, the transaction secured by the new dwelling is a residential mortgage transaction and is not rescindable. For example, if a consumer whose principal dwelling is currently A builds B, to be occupied by the consumer upon completion of construction, an advance on an open-end line to finance B and secured by B is a residential mortgage transaction. Dwelling, as defined in § 226.2, includes structures that are classified as personalty under State law. For example, a transaction secured by a mobile home, trailer, or houseboat used as the consumer's principal dwelling may be rescindable.

6. *Special rule for principal dwelling.* Notwithstanding the general rule that consumers may have only one principal dwelling, when the consumer is acquiring or constructing a new principal dwelling, a credit plan or extension that is subject to Regulation Z and is secured by the equity in

the consumer's current principal dwelling is subject to the right of rescission regardless of the purpose of that loan (for example, an advance to be used as a bridge loan). For example, if a consumer whose principal dwelling is currently A builds B, to be occupied by the consumer upon completion of construction, a loan to finance B and secured by A is subject to the right of rescission. Moreover, a loan secured by both A and B is, likewise, rescindable.

【*Paragraph*】 *15(a)(2)* ►*Exercise of the right.*

15(a)(2)(i) Provision of written notification.◄

1. *Consumer's exercise of right.* The consumer must exercise the right of rescission in writing ►and may, but is not required to, use◄ 【but not necessarily on】 the notice supplied under § 226.15(b). 【Whatever the means of sending the notification of rescission—mail, telegram or other written means—the time period for the creditor's performance under § 226.15(d)(2) does not begin to run until the notification has been received. The creditor may designate an agent to receive the notification so long as the agent's name and address appear on the notice provided to the consumer under § 226.15(b). Where the creditor fails to provide the consumer with a designated address for sending the notification of rescission, delivery of the notification to the person or address to which the consumer has been directed to send payments constitutes delivery to the creditor or assignee. State law determines whether delivery of the notification to a third party other than the person to whom payments are made is delivery to the creditor or assignee, in the case where the creditor fails to designate an address for sending the notification of rescission.】

►*15(a)(2)(ii) Party the consumer shall notify.*

15(a)(2)(ii)(B) After the three-business-day period following the transaction.

1. *In general.* To exercise an extended right of rescission, the consumer must notify the current owner of the debt obligation. Under § 226.15(a)(2)(ii)(B), the current owner of the debt obligation is deemed to have received the consumer's notification if the consumer provides it to the servicer, as defined in § 226.36(c)(3). Therefore, the period for the creditor's or owner's actions in § 226.15(d)(2) begins on the day the servicer receives the consumer's notification.◄

【*Paragraph*】 *15(a)(3)* ►*Rescission period.*

15(a)(3)(i) Three business days.◄

1. *Rescission period.* ►i.◄ The consumer's right to rescind does not expire until midnight after the third business day following the last of three events:

【•】►A.◄ The ►transaction◄【occurrence】 that gives rise to the right of rescission.

【•】►B.◄ Delivery of all material disclosures 【that are relevant to the plan】.

【•】►C.◄ Delivery to the consumer of the required rescission notice.

►ii.◄ For example, 【an account is opened on Friday, June 1, and the disclosures and notice of the right to rescind were given on Thursday, May 31; the rescission period will expire at midnight of the third business day after June 1—that is,】 ►assume the consumer received all material disclosures on Wednesday, May 23 and received the notice of the right to rescind on Thursday, May 31, and the transaction giving rise to the right of rescission occurred on Friday, June 1. The rescission period will expire at midnight after the third business day, which is◄ Tuesday June 5. 【In another example, if the disclosures are given and the account is opened on Friday, June 1, and the rescission notice is given on Monday, June 4, the rescission period expires at midnight of the third business day after June 4—that is, Thursday, June 7. The consumer must place the rescission notice in the mail, file it for telegraphic transmission, or deliver it to the creditor's place of business within that period in order to exercise the right.】

►iii. The provision of incorrect or incomplete material disclosures or an incorrect or incomplete notice of the right to rescind does not constitute delivery of the disclosures or notice. If the creditor originally provided incorrect or incomplete material disclosures, to commence the three-business-day rescission period, the creditor must deliver to the consumer complete, correct material disclosures together with a complete, correct, updated notice of the right to rescind. If the creditor originally provided an incorrect or incomplete notice of the right to rescind, to commence the three-business-day rescission period, the creditor must deliver to the consumer a complete, correct, updated notice of the right to rescind. In either situation, the consumer would have three business days after proper delivery to rescind the transaction.◄

【2. *Material disclosures.* Footnote 36 sets forth the material disclosures that must be provided before the rescission period can begin to run. The creditor must provide sufficient information to satisfy the requirements of § 226.6 for these disclosures. A creditor may satisfy this requirement by giving an initial disclosure statement that complies with the regulation. Failure to give the other required initial disclosures (such as the billing rights statement) or the information required under § 226.5b does not prevent the running of the rescission period, although that failure may result in civil liability or administrative sanctions. The payment terms set forth in footnote 36 apply to any repayment phase set forth in the agreement. Thus, the payment terms described in § 226.6(e)(2) for any repayment phase as well as for the draw period are "material disclosures."

3. *Material disclosures—variable rate program.* For a variable rate program, the material disclosures also include the disclosures listed in footnote 12 to § 226.6(a)(2): The circumstances under which the rate may increase; the limitations on the increase; and the effect of an increase. The disclosures listed in footnote 12 to § 226.6(a)(2) for any repayment phase also are material disclosures for variable-rate programs.】

【4.】 ►15(a)(3)(ii)◄ *Unexpired right of rescission.*

►*15(a)(3)(ii)(A) Up to three years.*◄

【When the creditor has failed to take the action necessary to start the three-day rescission period running the right to rescind automatically lapses on the occurrence of the earliest of the following three events:

• The expiration of three years after the occurrence giving rise to the right of rescission.

• Transfer of all the consumer's interest in the property.

• Sale of the consumer's interest in the property, including a transaction in which the consumer sells the dwelling and takes back a purchase money note and mortgage or retains legal title through a device such as an installment sale contract.】

►1. *Transfer.* A◄ transfer of all the consumer's interest ►that terminates the right of rescission◄ includes 【such】 transfers [as bequests and] ►by operation of law following the consumer's death and by◄ gift【s】. [A sale or transfer of the property need not be voluntary to terminate the right to rescind. For example, a foreclosure sale would terminate an unexpired right to rescind. As provided in section 125 of the act, the three-year limit may be extended by an administrative proceeding to enforce the provisions of § 226.15.】 A partial transfer of the consumer's interest, such as a transfer bestowing co-ownership on a spouse, does not terminate the right of rescission. ►Filing for bankruptcy generally does not terminate the right of rescission if the consumer retains an interest in the property after the bankruptcy estate is created.

2. *Sale.* A sale of the consumer's interest in the property that terminates the right of rescission includes a transaction in which the consumer sells the dwelling and takes back a purchase money note and mortgage or retains legal title through a device such as an installment sale contract.

3. *Involuntary sale or transfer.* A sale or transfer of the property need not be voluntary to terminate the right to rescind. For example, a foreclosure sale would terminate an unexpired right to rescind.◄

【*Paragraph*】 *15(a)(4)* ►*Joint owners*◄.

1. ►*In general*◄【*Joint owners*】. When more than one consumer has the right to rescind a transaction, any one of them may exercise that right and cancel the transaction on behalf of all. For example, if both a husband and wife have the right to rescind a transaction, either spouse acting alone may exercise the right and both are bound by the rescission.

►*Paragraph 15(a)(5)*

15(a)(5)(i) Definition of material disclosures.

1. *In general.* The right to rescind generally does not expire until midnight after the third business day following the latest of (1) the transaction that gives rise to the right of rescission, (2) delivery of the notice of the right to rescind, as set forth in § 226.15(b), or (3) delivery of all material disclosures, as set forth in § 226.15(a)(5)(i). *See* § 226.15(a)(3). A creditor must make the material disclosures clearly and conspicuously, consistent with the requirements of § 226.6(a)(2) or § 226.33(c). A creditor may satisfy the requirement to provide material disclosures by giving an account-opening table described in § 226.6(a)(1) or § 226.33(d)(2) and (d)(4) that complies with the regulation. Failure to provide the required non-material

disclosures set forth in § 226.6 or § 226.33 or the information required under § 226.5b does not affect the right of rescission, although such failure may be a violation subject to the liability provisions of section 130 of the Act, or administrative sanctions.

2. *Repayment phase.* Section 226.6(a)(2) requires that disclosures described in that section be given for the draw period and any repayment period, as applicable. *See* comment 6(a)–2. Thus, the terms described in § 226.15(a)(5) for any repayment phase as well as for the draw period are "material disclosures."

3. *Format.* Failing to satisfy terminology or format requirements set forth in § 226.6(a)(1) or (a)(2) or § 226.33(c), (d)(2), or (d)(4) in the model forms in Appendix G or Appendix K is not by itself a failure to provide material disclosures. Nonetheless, a creditor must provide the material disclosures clearly and conspicuously, as described in § 226.5(a)(1) and comments 5(a)(1)–1 and –2.

4. *Annual percentage rates.* Under § 226.15(a)(5)(i)(A), any annual percentage rates that must be disclosed in the account-opening table under §§ 226.6(a)(2)(vi) or 226.33(c)(6)(i) are considered material disclosures. This includes all annual percentage rates that may be imposed on the HELOC plan related to the payment plan disclosed in the table, except for any penalty annual percentage rates or any annual percentage rates for fixed-rate and fiexed-term advances during the draw period (unless those are the only advances allowed during the draw period). See §§ 226.6(a)(2) and (a)(2)(vi).

5. *Introductory rates.* Under § 226.15(a)(5)(i)(A), information related to introductory rates required to be disclosed in the account-opening table under § 226.6(a)(2)(vi)(B) or § 226.33(c)(6)(i)(B) are considered material disclosures. Thus, the term "material disclosures" would include the following introductory rate information that is required to be disclosed in the account-opening table: (1) The introductory rate; (2) the time period during which the introductory rate will remain in effect; and (3) the rate that will apply after the introductory rate expires.

6. *Variable-rate plans.* Under § 226.15(a)(5)(i)(A), information related to variable-rate plans required to be disclosed in the account-opening table under § 226.6(a)(2)(vi)(A) or § 226.33(c)(6)(i)(A) generally is considered material disclosures. Specifically, the term "material disclosures" would include the following information related to variable-rate plans required to be disclosed in the account-opening table: (1) The fact that the annual percentage rate may change due to the variable-rate feature; (2) an explanation of how the annual percentage rate will be determined; (3) the frequency of changes in the annual percentage rate; (4) any rules relating to changes in the index value and the annual percentage rate, and resulting changes in the payment amount, including, for example, an explanation of payment limitations and rate carryover; and (5) a statement of any limitations on changes in the annual percentage rate, including the minimum and maximum annual percentage rate that may be imposed under the payment plan disclosed in the table, or if no annual or other periodic limitations apply to changes in the annual percentage rate, a statement that no annual limitation exists. The term "material disclosures," however, does not include the disclosure of the lowest and highest value of the index in the past 15 years, even though this information is required to be included in the account-opening table as part of the variable rate information.

15(a)(5)(ii) Tolerances for accuracy of total of all one-time fees imposed by the creditor and any third parties to open the plan.

1. *Effect of the total of all one-time fees imposed to open the plan on termination fee disclosure.* Section 226.15(a)(5)(ii) provides tolerances for the accuracy of the total of all one-time fees imposed by the creditor and any third parties to open the plan and other disclosures affected by the total costs. Fees imposed by the creditor if a consumer terminates the plan prior to its scheduled maturity, which are also a material disclosure for purposes of rescission under § 226.15(a)(5), include waived total costs of one-time fees imposed to open the plan if the creditor will impose those costs on the consumer should the consumer terminate the plan within a certain amount of time after account opening. The tolerances set forth in § 226.15(a)(5)(ii) apply to these waived total costs of one-time fees imposed to open the plan that would be considered fees imposed by the creditor if a consumer terminates the plan prior to its scheduled maturity.◄

15(b) Notice of right to rescind.

►*15(b)(1) Who receives notice.*◄

1. [*Who receives notice*]►*In general.* i.◄ Each consumer entitled to rescind must be given:

[•]►A.◄ [Two copies of the]►The◄ rescission notice.

[•]►B. ◄ The material disclosures.

►ii.◄ [In]►For example, in◄ a transaction involving joint owners, both of whom are entitled to rescind, both must receive the notice of the right to rescind and disclosures. [For example, if both spouses are entitled to rescind a transaction, each must receive two copies of the rescission notice (one copy to each if the notice is provided in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act) and one copy of the disclosures.]

[2. *Format.* The rescission notice may be physically separated from the material disclosures or combined with the material disclosures, so long as the information required to be included on the notice is set forth in a clear and conspicuous manner. See the model notices in appendix G.]

►*15(b)(2) Format of notice.*

1. *Failure to format correctly.* The creditor's failure to comply with the format requirements in § 226.15(b)(2) does not by itself constitute a failure to deliver the notice of the right to rescind. However, to deliver the notice properly for purposes of § 226.15(a)(3), the creditor must provide the disclosures required under § 226.15(b)(3) clearly and conspicuously, as described in § 226.15(b)(3) and comment 15(b)(3)–1.

2. *Notice must be in writing in a form the consumer may keep.* The rescission notice must be in writing in a form that the consumer may keep. *See* § 226.5(a)(1)(ii).

15(b)(3) Required content of notice.◄

[3. *Content.* The notice must include all of the information outlined in § 226.15(b)(1) through (5). The requirement in § 226.15(b) that the transaction or occurrence be identified may be met by providing the date of the transaction or occurrence. The notice may include additional information related to the required information, such as:

• A description of the property subject to the security interest.

• A statement that joint owners may have the right to rescind and that a rescission by one is effective for all.

• The name and address of an agent of the creditor to receive notice of rescission.]

►1. *Clear and conspicuous standard.* Section 226.15(b)(3) requires that the disclosures in § 226.15(b)(3) be given clearly and conspicuously. *See* comments 5(a)(1)–1 and 5(a)(1)–2 for guidance on the clear and conspicuous standard.

2. *Methods for sending notification of exercise.* In addition to providing a postal address for regular mail in the disclosure required under § 226.15(b)(3)(vi), the creditor, at its option, may describe overnight courier, fax, e-mail, in-person, or other methods of communication that the consumer may use to send or deliver written notification to the creditor of exercise of the right of rescission.

3. *Creditor's or its agent's address.* If the creditor designates an agent to receive the consumer's rescission notice, the creditor may include its name along with the agent's name and address in the disclosure required by § 226.15(b)(3)(vi).

4. *Calendar date on which the rescission period expires.* i. In some cases, the creditor cannot provide the calendar date on which the three-business-day period for rescission expires, such as when the transaction is conducted through the mail or when the transaction giving rise to the right of rescission occurs through an escrow agent and involves two or more borrowers who do not sign at the same time. If the creditor cannot provide an accurate deadline, the creditor must provide the calendar date on which it reasonably and in good faith expects the three-business-day period for rescission to expire. For example, when opening a HELOC account, assume that a consumer receives all material disclosures on February 15. If the creditor uses an overnight courier service to deliver closing documents and the rescission notice to the consumer on Monday, March 1, the creditor could instruct the consumer to sign the documents no later than Wednesday, March 3, in which case the creditor should provide Saturday, March 6 as the calendar date after which the three-business-day period for rescission expires. In this example, Saturday, March 6 is the calendar date on which the creditor can reasonably expect the rescission period to expire because the creditor expects that the consumer will receive the notice of the right of rescission on Monday, March 1 with the rest of the closing documents and because the creditor can reasonably assume that the consumer will wait until the deadline of Wednesday, March 3 to sign the closing documents and complete the transaction.

ii. If the creditor provides a date in the notice that gives the consumer a longer period within which to rescind than the actual period for rescission, the notice shall be deemed to comply with the requirement in § 226.15(b)(3)(vii), as long as the creditor permits the consumer to rescind the transaction through the end of the date in the notice. For instance, in the example in comment 15(b)(3)–4.i. above, if the consumer signs the closing documents upon receipt on Monday, March 1, the actual expiration date of the right to rescind would be at the end of Thursday, March 4. The creditor's notice stating that the expiration date is Saturday, March 6 would be deemed compliant with § 226.15(b)(3)(vii), as long as the creditor permits the consumer to rescind through the end of Saturday, March 6.

iii. If the creditor provides a date in the notice that gives the consumer a shorter period within which to rescind than the actual period for rescission, the creditor shall be deemed to comply with the requirement in § 226.15(b)(3)(vii) if the creditor notifies the consumer that the deadline in the first notice of the right of rescission has changed and provides a second notice to the consumer stating that the consumer's right to rescind expires on a calendar date, which is three business days from the date the consumer receives the second notice. For instance, in the example in comment 15(b)(3)–4.i. above, if the consumer disregards the creditor's instructions to sign the closing documents no later than Wednesday, March 3, and signs the closing documents on Thursday, March 4, the actual date after which the right of rescission expires would be Monday, March 8. The creditor's notice stating that the expiration date is Saturday, March 6 would not violate § 226.15(b)(3)(vii) if the creditor discloses to the consumer that the expiration date in the first notice (March 6) has changed and provides a corrected notice with an additional three-business-day period to rescind. For example, the creditor could prepare on Monday, March 8 a second notice stating that the expiration date for the right to rescind is the end of Friday, March 12 and include that second notice in a package delivered by overnight courier to the consumer on Tuesday, March 9. The creditor also could include in the package a cover letter stating that the deadline to cancel the transaction has changed, and refer to the "Deadline to Cancel" section in the second notice.

5. *Form for consumer's exercise of right.* Creditors must provide a space for the consumer's name and property address on the form. Creditors are not obligated to complete the lines in the form for the consumer's name and property address, but may wish to do so to ensure that the consumer who uses the form to exercise the right can be readily identified. At its option, a creditor may include the account number on the form. A creditor may not, however, request or require that the consumer provide the account number on the form (such as including a space labeled "account number" for the consumer to complete).

15(b)(4) Optional content of notice.

1. *Related information.* Section 226.15(b)(4) lists optional disclosures that are related to the disclosures required by § 226.15(b)(3) that may be added to the notice. In addition, at the creditor's option, other information directly related to the disclosures required by § 226.15(b)(3) may be included in the notice. An explanation of the use of pronouns or other references to the parties to the transaction is directly related information. For example, a creditor might add to the notice a statement that "'You' refers to the customer and 'we' refers to the creditor."

15(b)(5)◄【4.】 *Time of providing notice.*

►1.◄ The notice required by § 226.15(b) ►must be given◄【need not be given】 before the ►transaction◄ 【occurrence】 giving rise to the right of rescission. ►If t◄【T】he creditor 【may】 deliver►s◄ the notice after the ►transaction,◄ 【occurrence but】► the timing requirement of § 226.15(b)(5) is violated and the right of rescission does not expire until the earlier of three business days after◄ 【rescission period will not begin to run until】 the notice is ►properly◄ given ►or upon the occurrence of one of the events listed in § 226.15(a)(3)(ii)(A)◄. For example, if the creditor ►delivers the material disclosures on Monday, March 1 and account opening occurs on that same day, but the creditor provides the rescission notice on Wednesday, March 24, the right of rescission does not expire until the end of the third business day after Wednesday, March 24, that is, until the end of Saturday, March 27◄ [provides the notice on May 15, but disclosures were given and the credit limit was raised on May 10, the 3-business-day rescission period will run from May 15】.

►*15(b)(6) Proper form of notice.*

1. A creditor satisfies § 226.15(b)(3) if it provides the model form in Appendix G, or a substantially similar notice, which is properly completed with the disclosures required by § 226.15(b)(3). For example, a notice would not fulfill the requirement to deliver the notice of the right to rescind if the date on which the three-business-day period for rescission terminates was not properly completed because the date was missing or incorrectly calculated. If the creditor provides a date that is later deemed inaccurate, the notice may be deemed to comply with § 226.15(b)(3) if the creditor follows § 226.15(b)(3)(vii) and the guidance in comment 15(b)(3)–4.◄

15(c) Delay of creditor's performance.

1. *General rule.* ►i.◄ Until the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded, the creditor must not, either directly or through a third party:

【•】►A.◄ Disburse advances to the consumer.

【•】►B.◄ Begin performing services for the consumer.

【•】►C.◄ Deliver materials to the consumer.

►ii.◄ A creditor may, however, continue to allow transactions under an existing open-end credit plan during a rescission period that results solely from the addition of a security interest in the consumer's principal dwelling. (See comment 15(c)–3 for other actions that may be taken during the delay period.)

2. *Escrow.* The creditor may disburse advances during the rescission period in a valid escrow arrangement. The creditor may not, however, appoint the consumer as "trustee" or "escrow agent" and distribute funds to the consumer in that capacity during the delay period.

3. *Actions during the delay period.* Section 226.15(c) does not prevent the creditor from taking other steps during the delay, short of beginning actual performance. Unless otherwise prohibited, such as by State law, the creditor may, for example:

【•】►i.◄ Prepare the cash advance check.

【•】►ii.◄ Perfect the security interest.

【•】►iii.◄ Accrue finance charges during the delay period.

4. *Performance by third party.* The creditor is relieved from liability for failure to delay performance if a third party with no knowledge that the rescission right has been activated provides materials or services, as long as any debt incurred for materials or services obtained by the consumer during the rescission period is not secured by the security interest in the consumer's dwelling. For example, if a consumer uses a bank credit card to purchase materials from a merchant in an amount below the floor limit, the merchant might not contact the card issuer for authorization and therefore would not know that materials should not be provided.

5. *Delay beyond rescission period.* ►i.◄ The creditor must wait until it is reasonably satisfied that the consumer has not rescinded ►within the applicable time period◄. For example, the creditor may satisfy itself by doing one of the following:

【•】►A.◄ Waiting a reasonable time after expiration of the rescission period to allow for delivery of a mailed notice.

【•】►B.◄ Obtaining a written statement from the consumer that the right has not been exercised. ►The statement must be signed and dated by the consumer only at the end of the three-day period.◄

►ii.◄ When more than one consumer has the right to rescind, the creditor cannot reasonably rely on the assurance of only one consumer, because other consumers may exercise the right.

15(d) Effects of rescission.

15(d)►(1)◄ Effects of rescission ►prior to the creditor disbursing funds◄.

[Paragraph] 15(d)(1)►(i) Effect of consumer's notice of rescission◄.

1. *Termination of security interest.* Any security interest giving rise to the right of rescission becomes void when the consumer 【exercises the right of rescission】►provides a notice of rescission to a creditor◄. The security interest is automatically negated regardless of its status and whether or not it was recorded or perfected. Under § 226.15【(d)(2)】►(d)(1)(ii)◄, however, the creditor must take 【any action】►whatever steps are◄ necessary to 【reflect the fact that】►terminate◄ the security interest 【no longer exists】.

2. *Extent of termination.* The creditor's security interest is void to the extent that it is related to the occurrence giving rise to the right of rescission. For example, upon rescission:

【•】►i.◄ If the consumer's right to rescind is activated by the opening of a plan, any security interest in the principal dwelling is void.

【•】►ii.◄ If the right arises due to an increase in the credit limit, the security interest is void as to the amount of credit extensions over the prior limit, but the security interest in amounts up to the original credit limit is unaffected.

【•】►iii.◄ If the right arises with each individual credit extension, then the interest is void as to that extension, and other extensions are unaffected.

【*Paragraph*】 *15*【*(d)(2)*】►*(d)(1)(ii) Creditor's obligations*◄.

1. *Refunds to consumer.* The consumer cannot be required to pay any amount 【in the form of money or property】 either to the creditor or to a third party as part of the credit transaction subject to the right of rescission. Any amounts [of this nature] already paid by the consumer must be refunded. *Any amount* includes finance charges already accrued, as well as other charges, such as broker fees, application and commitment fees, or fees for a title search or appraisal, whether paid to the creditor, paid by the consumer directly to the third party, or passed on from the creditor to the third party. It is irrelevant that these amounts may not represent profit to the creditor. For example:

【•】►i.◄ If the occurrence is the opening of the plan, the creditor must return any membership or application fee paid.

【•】►ii.◄ If the occurrence is the increase in a credit limit or the addition of a security interest, the creditor must return any fee imposed for a new credit report or filing fees.

【•】►iii.◄ If the occurrence is a credit extension, the creditors must return fees such as application, title, and appraisal or survey fees, as well as any finance charges related to the credit extension.

2. *Amounts not refundable to consumer.* Creditors need not return any money given by the consumer to a third party outside of the credit transaction, such as costs incurred for a building permit or for a zoning variance. 【Similarly, the term *any amount* does not apply to any money or property given by the creditor to the consumer; those amounts must be tendered by the consumer to the creditor under § 226.15(d)(3).】

3. *Reflection of security interest termination.* The creditor must take whatever steps are necessary to 【indicate that】►terminate◄ the security interest 【is terminated】. Those steps include the cancellation of documents creating the security interest, and the filing of release or termination statements in the public record. 【In a transaction involving subcontractors or suppliers that also hold security interests related to the credit transaction, the creditor】►If a mechanic's or materialman's lien is retained by a subcontractor or supplier of a creditor-contractor, the creditor-contractor◄ must ensure that the termination of 【their】►that◄ security interest【s】 is also reflected. The 20-day period for the creditor's action refers to the time within which the creditor must begin the process. It does not require all necessary steps to have been completed within that time, but the creditor is responsible for 【seeing the process through to completion】►ensuring that the process is completed◄.

►4. *Twenty-calendar-day period.* The 20-calendar-day period begins to runs from the date the creditor *receives* the consumer's notice. The creditor is deemed to have received the consumer's notice of rescission if the consumer provides the notice to the creditor or the creditor's agent designated on the notice. Where no designation is provided, the creditor is deemed to have received the notice if the consumer provides it to the servicer. See § 226.15(a)(2)(ii)(A).◄

【*Paragraph 15(d)(3).*

1. *Property exchange.* Once the creditor has fulfilled its obligations under § 226.15(d)(2), the consumer must tender to the creditor any property or money the creditor has already delivered to the consumer. At the consumer's option, property may be tendered at the location of the property. For example, if fixtures or furniture have been delivered to the consumer's home, the consumer may tender them to the creditor by making them available for pick-up at the home, rather than physically returning them to the creditor's premises. Money already given to the consumer *must* be tendered at the creditor's place of business. For purposes of property exchange, the following additional rules apply:

• A cash advance is considered money for purposes of this section even if the creditor knows what the consumer intends to purchase with the money.

• In a 3-party open-end credit plan (that is, if the creditor and seller are not the same or related persons), extensions by the creditor that are used by the consumer for purchases from third-party sellers are considered to be the same as cash advances for purposes of tendering value to the creditor, even though the transaction is a purchase for other purposes under the regulation. For example, if a consumer exercises the unexpired right to rescind after using a 3-party credit card for one year, the consumer would tender the amount of the purchase price for the items charged to the account, rather than tendering the items themselves to the creditor.

2. *Reasonable value.* If returning the property would be extremely burdensome to the consumer, the consumer may offer the creditor its reasonable value rather than returning the property itself. For example, if building materials have already been incorporated into the consumer's dwelling, the consumer may pay their reasonable value.

Paragraph 15(d)(4).

1. *Modifications.* The procedures outlined in § 226.15(d)(2) and (3) may be modified by a court. For example, when a consumer is in bankruptcy proceedings and prohibited from returning anything to the creditor, or when the equities dictate, a modification might be made. The sequence of procedures under § 226.15(d)(2) and (3), or a court's modification of those procedures under § 226.15(d)(4), does not affect a consumer's substantive right to rescind and to have the loan amount adjusted accordingly. Where the consumer's right to rescind is contested by the creditor, a court would normally determine whether the consumer has a right to rescind and determine the amounts owed before establishing the procedures for the parties to tender any money or property.】

►*15 (d)(2) Effects of rescission after the creditor disburses funds.*

15*(d)(2)(i) Effects of rescission if the parties are not in a court proceeding.*

1. *Effect of the process.* The process set forth in § 226.15(d)(2)(i) does not affect the consumer's ability to seek a remedy in court, such as an action to recover damages under section 130 of the act, and/or an action to seek to tender in installments. In addition, a creditor's written statement as described in § 226.15(d)(2)(i)(B) is not an admission by the creditor that the consumer's claim is a valid exercise of the right to rescind.

15(d)(2)(i)(A) Creditor's acknowledgment of receipt.

1. *Twenty-calendar-day period.* The 20-calendar-day period begins to run from the date the creditor *receives* the consumer's notice. The creditor is deemed to have received the consumer's notice of rescission if the consumer provides the notice to the servicer. See comment 15(a)(2)(ii)(B)–1.

15(d)(2)(i)(B) Creditor's written statement.

1. *Written statement regarding tender of money.* If the creditor disbursed money to the consumer, then the creditor's written statement must state the amount of money that the creditor will accept as the consumer's tender. For example, suppose the principal balance owed at the time the creditor received the consumer's notice of rescission was $165,000, the costs paid directly by the consumer at closing were $8,000, and the consumer made interest payments totaling $20,000 from the date of consummation to the date of the creditor's receipt of the consumer's notice of rescission. The creditor's written statement could provide that the acceptable amount of tender is $137,000, or some amount higher or lower than that amount.

2. *Reasonable date.* The creditor must provide the consumer with a reasonable date by which the consumer may tender the money or property described in paragraph (d)(2)(i)(B)(*1*) of this section. For example, it would be reasonable under most circumstances to permit the consumer's tender within 60 days of the creditor mailing or delivering the written statement.

3. *Tender of money or property.* For purposes of determining whether the consumer should tender money or property, the following additional rules apply:

i. A cash advance is considered money for purposes of this section even if the creditor knows what the consumer intends to purchase with the money.

ii. In a three-party open-end credit plan (that is, if the creditor and seller are not the same or related persons), extensions by the creditor that are used by the consumer for purchases from third-party sellers are considered to be the same as cash advances for purposes of tendering value to the creditor, even though the transaction is a purchase for other purposes under the regulation. For example, if a consumer exercises the unexpired right to rescind after using a three-party credit card for one year, the consumer would tender the amount of the purchase price for the items charged to the account, rather than tendering the items themselves to the creditor.

15(d)(2)(i)(C) Consumer's response.

1. *Reasonable value of property.* If returning the property would be extremely burdensome to the consumer, the consumer may offer the creditor its reasonable value rather than returning the property itself. For example, if aluminum siding has already been incorporated into the consumer's dwelling, the consumer may pay its reasonable value.

2. *Location for tender of property.* At the consumer's option, property may be tendered at the location of the property. For example, if aluminum siding or windows have been delivered to the consumer's home, the consumer may tender them to the creditor by making them available for pick-up at the home, rather than physically returning them to the creditor's premises. For example, if aluminum siding has already been incorporated into the consumer's dwelling, the consumer may pay its reasonable value.

15(d)(2)(i)(D) Creditor's security interest.

1. *Extent of termination.* See comment 15(d)(1)(i)–2.

2. *Reflection of security interest termination.* See comment 15(d)(1)(ii)–3.

15(d)(2)(ii) Effects of rescission in a court proceeding.

1. *Valid right of rescission.* The procedures set forth in § 226.15(d)(2)(ii) assume that the consumer's right to rescind has not expired as provided in § 226.15(a)(3)(ii). Thus, if the consumer provides a notice of rescission more than three years after consummation of the transaction, then the consumer's right to rescind has expired, and these procedures do not apply. See § 226.15(a)(3)(ii)(A).

15(d)(2)(ii)(A) Consumer's obligation.

1. *Tender of money.* If the creditor disbursed money to the consumer, the consumer shall tender to the creditor the principal balance owed at the time the creditor received the consumer's notice of rescission less any amounts the consumer has given to the creditor or a third party in connection with the transaction. For example, suppose the principal balance owed at the time the creditor received the consumer's notice of rescission was $165,000, the costs paid directly by the consumer at closing were $8,000, and the consumer made interest payments totaling $20,000 from the date of consummation to the date the creditor received the consumer's notice of rescission. The amount of the consumer's tender would be $137,000. This amount may be reduced by any amounts for damages, attorney's fees, or costs, as the court may determine.

2. *Refunds to consumer.* See comment 15(d)(1)(ii)–1.

3. *Amounts not refundable to consumer.* For purposes of § 226.15(d)(2)(ii)(A), the term *any amount* does not include any money given by the consumer to a third party outside of the credit transaction, such as costs the consumer incurred for a building permit or for a zoning variance. Similarly, the term *any amount* does not apply to any money or property given by the creditor to the consumer.

4. *Condition of consumer's tender.* There may be circumstances where the consumer has no obligation to tender and, therefore, the creditor's obligations would not be conditioned on the consumer's tender. In that case, within 20 calendar days after the creditor's receipt of a consumer's notice of rescission, the creditor would terminate the security interest and refund any amounts the consumer has given to the creditor or a third party in connection with the transaction.

5. *Tender of money or property.* See comment 15(d)(2)(i)(B)-3.

6. *Reasonable value of property.* See comment 15(d)(2)(i)(C)–1.

7. *Location for tender of property.* See comment 15(d)(2)(i)(C)–2.

15(d)(2)(ii)(B) Creditor's obligation.

1. *Extent of termination.* See comment 15(d)(1)(i)–2.

2. *Reflection of security interest termination.* See comment 15(d)(1)(ii)–3.

15(d)(2)(ii)(C) Judicial modification.

1. *Determination of the consumer's right to rescind.* The sequence of procedures under §§ 226.15(d)(2)(ii)(A) and (B), or a court's modification of those procedures under § 226.15(d)(2)(ii)(C), does not affect a consumer's substantive right to rescind and to have the loan amount adjusted accordingly. Where the consumer's right to rescind is contested by the creditor, a court would normally determine first whether the consumer's right to rescind has expired, then the amounts owed by the consumer and the creditor, and then the procedures for the consumer to tender any money or property.

2. *Judicial modification of procedures.* The procedures outlined in §§ 226.15(d)(2)(ii)(A) and (B) may be modified by a court. For example, when a consumer is in bankruptcy proceedings and prohibited from returning anything to the creditor, or when the equities dictate, a modification might be made. A court may modify the consumer's form or manner of tender, such as by ordering payment in installments or by approving the parties' agreement to an alternative form of tender.◄

15(e) Consumer's waiver of right to rescind.

[1. *Need for waiver.* To waive the right to rescind, the consumer must have a *bona fide* personal financial emergency that must be met before the end of the rescission period. The existence of the consumer's waiver will not, of itself, automatically insulate the creditor from liability for failing to provide the right of rescission.]

[2.]►1.◄ *Procedure.* [To waive or modify the right to rescind, the consumer must give a written statement that specifically waives or modifies the right, and also includes a brief description of the emergency. Each consumer entitled to rescind must sign the waiver statement. In a transaction involving multiple consumers, such as a husband and wife using their home as collateral, the waiver must bear the signatures of both spouses.]►A consumer may modify or waive the right to rescind only after the creditor delivers the notice required by § 226.15(b) and the disclosures required by § 226.6. After delivery of the required notice and disclosures, the consumer may waive or modify the right to rescind by giving the creditor a dated, written statement that specifically waives or modifies the right and describes the *bona fide* personal financial emergency. A waiver is effective only if each consumer entitled to rescind signs a waiver statement. Where there are multiple consumers entitled to rescind, the consumers may, but need not, sign the same waiver statement. See § 226.2(a)(11) to determine which natural persons are consumers with the right to rescind.

2. *Bona fide personal financial emergency.* To modify or waive the right to rescind, there must be a *bona fide* personal financial emergency that requires disbursement of loan proceeds before the end of the rescission period. Whether there is a *bona fide* personal financial emergency is determined by the facts surrounding individual circumstances. A *bona fide* personal financial emergency typically, but not always, will involve imminent loss of or harm to a dwelling or harm to the health or safety of a natural person. A waiver is not effective if the consumer's statement is inconsistent with facts known to the creditor. The following examples describe circumstances that are and are not a *bona fide* personal financial emergency.

i. *Examples—bona fide personal financial emergency.* Examples of a *bona fide* personal financial emergency include the following:

A. The imminent sale of the consumer's home at foreclosure, where the foreclosure sale will proceed unless the loan proceeds are made available to the consumer during the rescission period.

B. The need for loan proceeds to fund immediate repairs to ensure that a dwelling is habitable, such as structural repairs needed due to storm damage, where loan proceeds are needed during the rescission period to pay for the repairs.

C. The imminent need for health care services, such as in-home nursing care for a patient recently discharged from the hospital, where loan proceeds are needed during the rescission period to obtain the services.

ii. Examples—not a bona fide personal financial emergency. Examples of circumstances that are not a *bona fide* personal financial emergency include the following:

A. The consumer's desire to purchase goods or services not needed on an emergency basis, even though the price may increase if purchased after the rescission period.

B. The consumer's desire to invest immediately in a financial product, such as purchasing securities.

iii. Consumer's waiver statement inconsistent with facts. The conditions for a waiver are not met where the consumer's waiver statement is inconsistent with facts known to the creditor. For example, the conditions for a waiver are not met where the consumer's waiver statement states that loan proceeds are needed during the rescission period to abate flooding in a consumer's basement, but the creditor is aware that there is no flooding.◄

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Section 226.16—Advertising

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16(d) Additional requirements for home-equity plans.

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5. *Promotional rates and payments in advertisements for home-equity plans.* Section 226.16(d)(6) requires additional

disclosures for promotional rates or payments.

i. *Variable-rate plans.* In advertisements for variable-rate plans, if the advertised annual percentage rate is based on ❲(or the advertised payment is derived from)❳ the index and margin that will be used to make rate ❲(or payment)❳ adjustments over the term of the ❲loan❳ ► plan ◄, then there is no promotional rate❲ or promotional payment❳. If, however, the advertised annual percentage rate is not based on ❲(or the advertised payment is not derived from)❳ the index and margin that will be used to make rate ❲(or payment)❳ adjustments, and a reasonably current application of the index and margin would result in a higher annual percentage rate ❲(or, given an assumed balance, a higher payment)❳ then there is a promotional rate❲ or promotional payment❳. ► If the advertised payment is the same as other minimum payments under the plan derived by applying a reasonably current index and margin and given an assumed balance, then there is no promotional payment. If, however, the advertised payment is less than other minimum payments under the plan based on the same assumptions, then there is a promotional payment. For example, if the advertised payment is an interest-only payment applicable during the draw period, and minimum payments during the repayment period will be higher because they are based on a schedule that fully amortizes the outstanding balance by the end of the repayment period, or there is no repayment period and a balloon payment would result at the end of the draw period, then the advertised payment is a promotional payment. ◄

ii. *Equal prominence, close proximity.* Information required to be disclosed in § 226.16(d)(6)(ii) that is immediately next to or directly above or below the promotional rate or payment (but not in a footnote) is deemed to be closely proximate to the listing. Information required to be disclosed in § 226.16(d)(6)(ii) that is in the same type size as the promotional rate or payment is deemed to be equally prominent.

iii. *Amounts and time periods of payments.* Section 226.16(d)(6)(ii)(C) requires disclosure of the amount and time periods of any payments that will apply under the plan. This section may require disclosure of several payment amounts, including any balloon payment. For example, if an advertisement for a home-equity plan offers a $100,000 five-year line of credit and assumes that the entire line is drawn resulting in a minimum payment of $800 per month for the first six months, increasing to $1,000 per month after month six, followed by a $50,000 balloon payment after five years, the advertisement must disclose the amount and time period of each of the two monthly payment streams, as well as the amount and timing of the balloon payment, with equal prominence and in close proximity to the promotional payment. However, if the final payment could not be more than twice the amount of other minimum payments, the final payment need not be disclosed. ► In another example, if an advertisement for a home-equity plan offers a $100,000 line of credit with a 10-year draw period and a 10-year repayment period and assumes that the entire line is drawn resulting in an interest-only minimum payment of $300 per month during the draw period, increasing to $750 per month during the repayment period, the advertisement must disclose the amount and time period of each of the two monthly payment streams, with equal prominence and in close proximity to the promotional payment. ◄

iv. ❲*Plans other than variable-rate plans*❳ ►*Additional draw* ◄. ❲For a plan other than a variable-rate plan, if❳ ► If ◄ an advertised payment is calculated in the same way as other payments based on an assumed balance, the fact that the minimum payment could increase ❲solely❳ if the consumer made an additional draw does not make the payment a promotional payment. For example, if a payment of $500 results from an assumed $10,000 draw, and the payment would increase to $1,000 if the consumer made an additional $10,000 draw, the payment is not a promotional payment.

v. *Conversion option.* Some home-equity plans permit the consumer to repay all or part of the balance during the draw period at a fixed rate (rather than a variable rate) and over a specified time period. The fixed-rate conversion option does not, by itself, make the rate or payment that would apply if the consumer exercised the fixed-rate conversion option a promotional rate or payment.

vi. *Preferred-rate provisions.* Some home-equity plans contain a preferred-rate provision, where the rate will increase upon the occurrence of some event, such as the consumer-employee leaving the creditor's employ, the consumer closing an existing deposit account with the creditor, or the consumer revoking an election to make automated payments. A preferred-rate provision does not, by itself, make the rate or payment under the preferred-rate provision a promotional rate or payment.

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► 10. *Comparisons in advertisements.* The requirements of § 226.16(d)(8) apply to all advertisements for home-equity plans, including radio and television advertisements. A comparison includes a claim about the amount a consumer may save under the advertised plan. For example, a statement such as: "Save $400 per month on a balance of $35,000," constitutes an implied comparison between the advertised plan's payment and a consumer's actual or hypothetical payment under alternative credit plans.

11. *Variable-rate plans.* The requirements of § 226.16(d)(8) apply to comparisons in advertisements for variable-rate plans even if the payments or rates shown for the advertised plan are not promotional payments or rates, as defined in § 226.16(d)(6)(i). In this case, the payment or rate may not be available for the full term of the plan because the rate may vary in accordance with the index.

12. *Misleading claims of debt elimination.* The prohibition in § 226.16(d)(11) against misleading claims of debt elimination or waiver or forgiveness does not apply to legitimate statements that the advertised product may reduce debt payments, consolidate debts, or shorten the term of the debt. Examples of misleading claims of debt elimination or waiver or forgiveness of loan terms with, or obligations to, another creditor of debt include: "Get out of debt;" "Take advantage of this great deal to get rid of all your debt;" "Celebrate life, debt-free;" and "❲Name of home-equity plan❳ gives you an easy-to-follow plan for being debt-free." ◄

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Subpart C—Closed-End Credit

Section 226.17—General Disclosure Requirements

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17(c) Basis of disclosures and use of estimates.

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Paragraph 17(c)(1).

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❲14. *Reverse mortgages.* Reverse mortgages, also known as reverse annuity or home equity conversion mortgages, typically involve the disbursement of monthly advances to the consumer for a fixed period or until the occurrence of an event such as the consumer's death. Repayment of the loan (generally a single payment of principal and accrued interest) may be required to be made at the end of the disbursements or, for example, upon the death of the consumer. In disclosing these transactions, creditors must apply the following rules, as applicable:

- If the reverse mortgage has a specified period for disbursements but repayment is due only upon the occurrence of a future event such as the death of the consumer, the creditor must assume that disbursements will be made until they are scheduled to end. The creditor must assume repayment will occur when disbursements end (or within a period following the final disbursement which is not longer than the regular interval between disbursements). This assumption should be used even though repayment may occur before or after the disbursements are scheduled to end. In such cases, the creditor may include a statement such as "The disclosures assume that you will repay the loan at the time our payments to you end. As provided in your agreement, your repayment may be required at a different time."
- If the reverse mortgage has neither a specified period for disbursements nor a specified repayment date and these terms will be determined solely by reference to future events including the consumer's death, the creditor may assume that the disbursements will end upon the consumer's death (estimated by using actuarial tables, for example) and that repayment will be required at the same time (or within a period following the date of the final disbursement which is not longer than the regular interval for disbursements). Alternatively, the creditor may base the disclosures upon another future event it estimates will be most likely to occur first. (If terms will be determined by reference to future events which do not include the consumer's death, the creditor must base the disclosures upon the occurrence of the event estimated to be most likely to occur first.)
- In making the disclosures, the creditor must assume that all disbursements and

accrued interest will be paid by the consumer. For example, if the note has a nonrecourse provision providing that the consumer is not obligated for an amount greater than the value of the house, the creditor must nonetheless assume that the full amount to be disbursed will be repaid. In this case, however, the creditor may include a statement such as "The disclosures assume full repayment of the amount advanced plus accrued interest, although the amount you may be required to pay is limited by your agreement."

• Some reverse mortgages provide that some or all of the appreciation in the value of the property will be shared between the consumer and the creditor. Such loans are considered variable-rate mortgages, as described in comment 17(c)(1)–11, and the appreciation feature must be disclosed in accordance with § 226.18(f)(1). If the reverse mortgage has a variable interest rate, is written for a term greater than one year, and is secured by the consumer's principal dwelling, the shared appreciation feature must be described under § 226.19(b)(2)(vii).❚

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17(d)–Multiple creditors; multiple consumers.

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2. *Multiple consumers.* When two consumers are joint obligors with primary liability on an obligation, the disclosures may be given to either one of them. If one consumer is merely a surety or guarantor, the disclosures must be given to the principal ► obligor ◄ ❚debtor❚. In rescindable transactions, however, separate disclosures must be given to each consumer who has the right to rescind under § 226.23, ❚although the❚ ► except that:

i. The ◄ disclosures required under § 226.19(b) need only be provided to the consumer who expresses an interest in a variable-rate loan program.

►ii. The disclosures required under § 226.19(a) need only be provided to one consumer who will have primary liability on the obligation. Material disclosures under § 226.23(a)(5) and the notice of the right to rescind required by § 226.23(b), however, must be given before consummation to each consumer who has the right to rescind, including any such consumer who is not an obligor. *See* §§ 226.2(a)(11), 226.17(b), 226.23(b). ◄

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17(f) Early disclosures.

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Paragraph 17(f)(2).

1. *Irregular transactions.* For purposes of this paragraph, a transaction is deemed to be "irregular" according to the definition in ❚footnote 46 of❚ § 226.22(a)(3).

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Section 226.18—Content of Disclosures

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18(k) Prepayment.

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Paragraph 18(k)(1).

1. *Penalty.* ❚This❚ ► Section 226.18(k)(1) ◄ applies only to those transactions in which the interest calculation takes account of all scheduled reductions in principal, as well as transactions in which interest calculations are made daily. The term *penalty* as used here encompasses only those charges that are assessed strictly because of the prepayment in full of a simple-interest obligation, as an addition to all other amounts. Items which are penalties include, for example:

❚• Interest charges for any period after prepayment in full is made.❚ ►i. Charges determined by treating the loan balance as outstanding for a period after prepayment in full and applying the interest rate to such "balance," even if the charge results from the interest accrual amortization method used on the transaction. "Interest accrual amortization" refers to the method by which the amount of interest due for each period (e.g., month) in a transaction's term is determined. For example, "monthly interest accrual amortization" treats each payment as made on the scheduled, monthly due date even if it is actually paid early or late (until the expiration of a grace period). Thus, under monthly interest accrual amortization, if the amount of interest due on May 1 for the preceding month of April is $3000, the creditor will require payment of $3000 in interest whether the payment is made on April 20, on May 1, or on May 10. In this example, if the interest charged for the month of April upon prepayment in full on April 20 is $3000, the charge constitutes a prepayment penalty of $1000 because the amount of interest actually earned through April 20 is only $2000. ◄ (See the commentary to § 226.17(a)(1) regarding disclosure of ❚interest❚ ► such ◄ charges assessed for periods after prepayment in full as directly related information ►, for transactions not secured by real property or a dwelling ◄.)

❚•❚ ►ii. ◄ A minimum finance charge in a simple-interest transaction. (See the commentary to § 226.17(a)(1) regarding the disclosure of a minimum finance charge as directly related information.) Items which are not penalties include, for example, loan guarantee fees.

* * * * *

Section 226.19—❚Certain Mortgage and Variable-Rate Transactions.❚ ► Early Disclosures and Adjustable-rate Disclosures for Transactions Secured by Real Property or a Dwelling.◄

1. *Coverage.* Section 226.19 applies to transactions secured by real property or a dwelling, other than home equity lines of credit subject to § 226.5b. Creditors must make the disclosures required by § 226.19 even if the transaction is not subject to the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. 2602 *et seq.,* and its implementing Regulation X, 24 CFR 3500.1 *et seq.,* administered by the U.S. Department of Housing and Urban Development. For example, disclosures are required for construction loans that are not covered by RESPA or Regulation X because they are not considered "federally related mortgage loans." *See* 12 U.S.C. 2602(1); 15 CFR 3500.2(b). However, § 226.19 only applies to transactions that are offered or extended to a consumer primarily for personal, family, or household purposes, even if the transactions are secured by real property or a dwelling. TILA and Regulation Z do not apply to transactions that are primarily for business, commercial, or agricultural purposes. *See* 15 U.S.C. 1603(1); § 226.3(a)(2). *See also* § 226.2(a)(12) and (b)(2). Section 226.19(a)(4) contains special disclosure timing requirements for mortgage transactions secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53(D)).

19(a) Mortgage transactions.

1. *Multiple consumers.* For a discussion of how to determine to which consumers creditors must provide the disclosures required under § 226.19(a), see comment 17(d)–2.◄

► Paragraph 19(a)(1) ◄

19(a)(1)(i) Time of► *good faith estimates of*◄ *disclosure*►*s* ◄.

❚1. *Coverage.* This section requires early disclosure of credit terms in mortgage transactions that are secured by a consumer's dwelling (other than home equity lines of credit subject to § 226.5b or mortgage transactions secured by an interest in a timeshare plan) that are also subject to the Real Estate Settlement Procedures Act (RESPA) and its implementing Regulation X, administered by the Department of Housing and Urban Development (HUD). To be covered by § 226.19, a transaction must be a Federally related mortgage loan under RESPA. "Federally related mortgage loan" is defined under RESPA (12 U.S.C. 2602) and Regulation X (24 CFR 3500.2), and is subject to any interpretations by HUD.❚

❚2.❚►1.◄ *Timing and use of estimates.* The disclosures required by § 226.19(a)(1)(i) must be delivered or mailed not later than three business days after the creditor receives the consumer's written application. The general definition of "business day" in § 226.2(a)(6)—a day on which the creditor's offices are open to the public for substantially all of its business functions—is used for purposes of § 226.19(a)(1)(i). *See* comment 2(a)(6)–1. This general definition is consistent with the definition of "business day" in HUD's Regulation X—a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. *See* 24 CFR 3500.2. Accordingly, the three-business-day period in § 226.19(a)(1)(i) for making early disclosures coincides with the time period within which creditors ❚subject to RESPA❚ must provide good faith estimates of settlement costs ►for transactions subject to RESPA◄. If the creditor does not know the precise credit terms, the creditor must base the disclosures ►required by § 226.19(a)(1)(i)◄ on the best information reasonably available and indicate that the disclosures are estimates under § 226.17(c)(2). If many of the disclosures are estimates, the creditor may include a statement to that effect (such as "all numerical disclosures ❚except the late-payment disclosure❚ are estimates") instead of separately labeling each estimate. In the alternative, the creditor may label as an estimate only the items primarily affected by unknown information. (*See* the commentary to § 226.17(c)(2).) The creditor may provide explanatory material concerning the estimates and the contingencies that may affect the actual terms, in accordance with the commentary to § 226.17(a)(1)[.]▶and § 226.37. The disclosures required by § 226.19(a)(2) may not contain estimates, however, with limited exceptions. See the commentary on § 226.19(a)(2) for a discussion of limitations on estimates in disclosures made under that subsection.◀

[3.]▶2.◀ *Written application.* Creditors may rely on RESPA and Regulation X (including any interpretations issued by HUD) in deciding whether a "written application" has been received. In general, Regulation X defines an "application" to mean the submission of a borrower's financial information in anticipation of a credit decision relating to a federally-related mortgage loan. *See* 24 CFR 3500.2(b). ▶Creditors may rely on RESPA and Regulation X even for a transaction not subject to RESPA.◀An application is received when it reaches the creditor in any of the ways applications are normally transmitted—by mail, hand delivery, or through an intermediary agent or broker. (*See* [comment 19(b)–3]▶the commentary on § 226.19(d)(3)◀ for guidance in determining whether or not the transaction involves an intermediary agent or broker.) If an application reaches the creditor through an intermediary agent or broker, the application is received when it reaches the creditor, rather than when it reaches the agent or broker.

[4.]▶3.◀ *Denied or withdrawn application.* The creditor may determine within the three-business-day period that the application will not or cannot be approved on the terms requested, as, for example, when a consumer applies for a type or amount of credit that the creditor does not offer, or the consumer's application cannot be approved for some other reason. In that case, or if the consumer withdraws the application within the three-business-day waiting period, the creditor need not make the disclosures under this section. If the creditor fails to provide early disclosures and the transaction is later consummated on the original terms, the creditor will be in violation of this provision. If, however, the consumer amends the application because of the creditor's unwillingness to approve it on its original terms, no violation occurs for not providing disclosures based on the original terms. But the amended application is a new application subject to § 226.19(a)(1)(i).

[5.]▶4.◀ *Itemization of amount financed.* In many mortgage transactions ▶subject to RESPA◀, the itemization of the amount financed required by [§ 226.18(c)]▶§ 226.38(j)◀ will contain items, such as origination fees or points, that also must be disclosed as part of the good faith estimates of settlement costs required under RESPA. Creditors furnishing the RESPA good faith estimates need not give consumers any itemization of the amount financed▶, whether or not a transaction is subject to RESPA◀.

19(a)(1)(ii) Imposition of fees.

1. *Timing of fees.* The consumer must receive the disclosures required by this section before paying or incurring any fee imposed by a creditor or other person in connection with the consumer's application for a mortgage transaction that is subject to § 226.19(a)(1)(i), except as provided in § 226.19(a)(1)(iii). ▶(Under § 226.19(a)(1)(iv), fees paid after the consumer receives disclosures must be refundable for three business days after the consumer receives those disclosures.)◀ If the creditor delivers the disclosures to the consumer in person, a fee may be imposed anytime after delivery. If the creditor places the disclosures in the mail, the creditor may impose a fee after the consumer receives the disclosures or, in all cases, after midnight [on the third business day] following ▶the third business day after◀ mailing of the disclosures. ▶Creditors that use electronic mail or a courier to provide disclosures may also follow this approach. Whatever method is used to provide disclosures, creditors may rely on documentation of receipt in determining when a fee may be imposed.◀ For purposes of § 226.19(a)(1)(ii), the term "business day" means all calendar days except Sundays and legal public holidays referred to in § 226.2(a)(6). *See* [C]▶c◀omment 2(a)(6)–2. For example, assuming that there are no intervening legal public holidays, a creditor that receives the consumer's written application on Monday and mails the early mortgage loan disclosure on Tuesday may impose a fee on the consumer [after midnight on Friday.]▶on Saturday◀.

2. *Fees restricted.* A creditor or other person may not impose any fee, such as for an appraisal, underwriting, or broker services, until the consumer has received the disclosures required by § 226.19(a)(1)(i). [The only]▶An◀ exception to the fee restriction allows the creditor or other person to impose a *bona fide* and reasonable fee for obtaining a consumer's credit history, such as for a credit report(s). ▶*See* § 226.19(a)(1)(iii).◀ Further, if housing or credit counseling is required by applicable law, a *bona fide* and reasonable charge imposed by a counselor or counseling agency for such counseling is not a "fee" for purposes of § 226.19(a)(1)(ii). *See* § 226.19(a)(1)(v).◀

3. *Collection of fees.* A creditor complies with § 226.19(a)(1)(ii) if—

i. The creditor receives a consumer's written application directly from the consumer and does not collect any fee, other than a fee for obtaining a consumer's credit history, until the consumer receives the early mortgage loan disclosure.

ii. A third party submits a consumer's written application to a creditor and both the creditor and third party do not collect any fee, other than a fee for obtaining a consumer's credit history, until the consumer receives the early mortgage loan disclosure from the creditor.

iii. A third party submits a consumer's written application to a [second]▶subsequent◀ creditor following a prior creditor's denial of an application made by the same consumer (or following the consumer's withdrawal), and, if a fee already has been assessed, the new creditor or third party does not collect or impose any additional fee▶, other than a fee for obtaining a consumer's credit history,◀ until the consumer receives an early mortgage loan disclosure from the new creditor.

▶4. *Examples.* Under § 226.19(a)(1)(ii), neither a creditor nor any other person may impose a fee on a consumer in connection with the consumer's application for a mortgage transaction before the consumer has received the disclosures required by § 226.19(a)(1)(i) to be provided within three business days after the creditor receives the consumer's application. A fee is imposed in violation of § 226.19(a)(1)(ii) if, before a consumer receives the early disclosures required by § 226.19(a)(1)(i), the consumer is obligated to pay a fee or the consumer pays a fee, even if the fee is refundable. For example, a fee is imposed if a creditor takes the consumer's check for payment, whether or not the check is post-dated and/or the creditor agrees to wait to until the consumer receives the disclosures required by § 226.19(a)(1)(i) to deposit the check. For further example, a fee is imposed if a creditor uses the consumer's credit card or debit card to initiate payment or places a hold on the consumer's account. A fee is not imposed, however, if a creditor or other person takes a number, code, or other information that identifies a consumer's account before a consumer receives the disclosures required by § 226.19(a)(1)(i), for example, on an application form, but does not use the information to initiate payment from or place a hold on the account until after the consumer receives those disclosures.

5. *Reverse mortgages subject to § 226.33.* Under § 226.19(a)(1)(ii), fees generally may be imposed after a consumer receives the disclosures required by § 226.19(a)(1)(i). However, under § 226.19(a)(1)(iv), a nonrefundable fee may not be imposed within three business days after a consumer receives the early disclosures. For reverse mortgages subject to §§ 226.19 and 226.33, moreover, creditors and other persons also must comply with the restriction on imposing a nonrefundable fee within three business days after a consumer completes required counseling, under § 226.40(b)(2). *See* comment 40(b)(2)(i)–4.i.◀

19(a)(1)(iii) Exception to fee restriction.

1. *Requirements.* A creditor or other person may impose a fee before the consumer receives the required disclosures if it is for obtaining the consumer's credit history, such as by purchasing a credit report(s) on the consumer. The fee also must be *bona fide* and reasonable in amount. For example, a creditor may collect a fee for obtaining a credit report(s) if it is in the creditor's ordinary course of business to obtain a credit report(s). If the criteria in § 226.19(a)(1)(iii) are met, the creditor may describe or refer to this fee, for example, as an "application fee."

▶*19(a)(1)(iv) Imposition of nonrefundable fees.*

1. *Business day.* For purposes of § 226.19(a)(1)(iv), the term "business day" means all calendar days except Sundays and the legal public holidays referred to in § 226.2(a)(6). *See* comment 2(a)(6)–2.

2. *Refund period.* A fee may be imposed after the consumer receives the disclosures required under § 226.19(a)(1)(i) and before the expiration of three business days, but the fee must be refunded if, within three

business days after receiving the required information, the consumer decides not to enter into a loan agreement and requests a refund. (A notice of the right to receive a refund is provided in the publication entitled "Key Questions to Ask About Your Mortgage," which must be provided at the time an application form is provided to the consumer or before the consumer pays a nonrefundable fee, whichever is earlier. *See* § 226.19(c).) A creditor or other person may, but need not, rely on the presumption that a consumer receives those disclosures three business days after they are mailed to the consumer or delivered to the consumer by means other than delivery in person. *See* § 226.19(a)(1)(ii) and comment 19(a)(1)(ii)–1. If a creditor or other person relies on that presumption of receipt, a nonrefundable fee may not be imposed until after the end of the sixth business day following the day disclosures are mailed or delivered by means other than in person. The following examples illustrate how to determine when the refund period ends (assuming that all referenced days are business days and there are no intervening legal public holidays):

i. Assume a creditor receives a consumer's application on Monday, and the consumer receives the early disclosures in person on Tuesday and that same day pays an application fee (distinct from a previously paid fee for obtaining the consumer's credit history). The fee must be refundable through the end of Friday, the third business day after the consumer received the early disclosures. If the consumer does not request a refund of the fee by the end of Friday, however, the fee ceases to be refundable under § 226.19(a)(1)(iv), even if on Saturday or thereafter the consumer decides not to enter into the transaction.

ii. Assume a creditor receives a consumer's application on Monday and places the early disclosures in the mail on Tuesday. The creditor relies on the presumption of receipt and the consumer is considered to receive the early disclosures on Friday, the third business day after the disclosures are mailed. The consumer pays an appraisal fee the next Monday. The fee must be refundable through the end of Tuesday, the third business day after the consumer received the early disclosures and the sixth business day after the disclosures were mailed. If the consumer does not request a refund of the fee by the end of Tuesday, however, the fee ceases to be refundable under § 226.19(a)(1)(iv), even if on Wednesday or thereafter the consumer decides not to enter into the transaction.

iii. Assume a creditor receives a consumer's application on Monday and places the early disclosures in the mail on Wednesday. The consumer receives the disclosures on Friday and pays an application fee the following Wednesday. The fee need not be refundable, because the refund period expired at the end of the previous day, Tuesday, the third business day after the consumer received the early disclosures.

3. *Reverse mortgages subject to § 226.33.* Under § 226.19(a)(1)(iv), a nonrefundable fee may not be imposed within three business days after a consumer receives the early disclosures required by § 226.19(a)(1)(i) for a closed-end mortgage secured by real property or a dwelling. *See* § 226.19(a)(1)(iv). For reverse mortgages subject to §§ 226.19 and 226.33, moreover, creditors and other persons also must comply with the restriction on imposing a nonrefundable fee within three business days after a consumer completes required counseling, under § 226.40(b)(2). *See* comment 40(b)(2)(i)–4.ii.

19(a)(1)(v) Counseling fee.

1. *In general.* For purposes of § 226.19(a)(1)(ii), if housing or credit counseling is required by applicable law, a *bona fide* and reasonable charge imposed for such counseling is not a fee imposed on a consumer in connection with the consumer's application for a mortgage transaction and therefore may be imposed before the consumer receives the early disclosures required by § 226.19(a)(1)(i). For example, a fee for housing counseling that a consumer must complete in connection with a reverse mortgage insured by the U.S. Department of Housing and Urban Development may be imposed before the consumer receives the early disclosures. Notwithstanding § 226.19(a)(1)(iv), a charge for counseling that is not considered a fee imposed in connection with a mortgage transaction under § 226.19(a)(1)(ii) need not be refundable if the consumer does not proceed with a loan transaction.◀

▶*Paragraph*◀ *19(a)(2)* 【*Waiting periods required.*】

1. *Business day definition.* For purposes of § 226.19(a)(2), "business day" means all calendar days except Sundays and the legal public holidays referred to in § 226.2(a)(6). *See* comment 2(a)(6)–2.

2. *Consummation after* 【*both*】▶*all*◀ *waiting periods expire.* Consummation may not occur until both the seven-business-day waiting period and the three-business-day waiting period▶(s)◀ have expired. For example, assume a creditor delivers the early disclosures to the consumer in person or places them in the mail on Monday, June 1, and the creditor then delivers 【corrected】▶new◀ disclosures in person to the consumer on Wednesday, June 3. Although Saturday, June 6 is the third business day after the consumer received the 【corrected】▶new◀ disclosures, consummation may not occur before Tuesday, June 9, the seventh business day following delivery or mailing of the early disclosures.

19(a)(2)(i) Seven-business-day waiting period.

1. *Timing.* The disclosures required by § 226.19(a)(1)(i) must be delivered or placed in the mail no later than the seventh business day before consummation. The seven-business-day waiting period begins 【when】▶the first business day after◀ the creditor delivers the early disclosures or places them in the mail, not 【when】▶the first business day after◀ the consumer receives or is deemed to have received the early disclosures. For example, if a creditor delivers the early disclosures to the consumer in person or places them in the mail on 【Monday, June 1】▶Sunday, May 31◀, consummation may occur on or after 【Tuesday, June 9】▶Monday, June 8◀, the seventh business day following delivery or mailing of the early disclosures.

▶*19(a)(2)(ii) Three-business-day waiting period.*

1. *New disclosures in all cases.* The creditor must provide new disclosures under § 226.38 so that the consumer receives them not later than the third business day before consummation, even if the new disclosures are identical to the early disclosures provided under § 226.19(a)(1)(i).

2. *Content of disclosures.* Disclosures made under § 226.19(a)(2)(ii) must contain each of the applicable disclosures required by § 226.38.

3. *Estimates.* Section 226.19(a)(2)(ii) provides that only the disclosures required by §§ 226.38(c)(3)(i)(C), 226.38(c)(3)(ii)(C), 226.38(c)(6)(i), and 226.38(e)(5)(i) may be estimated disclosures. Because estimated amounts of escrowed taxes and insurance premiums and mortgage insurance premiums disclosed (as applicable) under §§ 226.38(c)(3)(i)(C), 226.38(c)(3)(ii)(C), and 226.38(c)(6)(i) are components of the total periodic payments disclosure required by §§ 226.38(c)(3)(i)(D) and 226.38(c)(3)(ii)(D) and the total payments disclosure required by § 226.38(e)(5)(i), those disclosures are estimated disclosures. (A total payments disclosure is not required for loans with a negative amortization feature subject to § 226.38(c)(6).) Creditors may estimate components of the total periodic payments disclosures required by §§ 226.38(c)(3)(i)(C), 226.38(c)(3)(ii)(C) and 226.38(c)(6)(i) and the total payment disclosure required by § 226.38(e)(5)(i) only to the extent the estimated escrowed amounts and mortgage insurance premiums affect those disclosures.

4. *Timing.* The creditor must provide final disclosures so that the consumer receives them not later than the third business day before consummation. For example, for consummation to occur on Thursday, June 11, the consumer must receive the disclosures on or before Monday, June 8.◀

Alternative 1—Paragraph 19(a)(2)(iii)

▶*19(a)(2)(iii) Additional three-business-day waiting period.*

1. *Conditions for corrected disclosures.* A disclosed annual percentage rate is accurate for purposes of § 226.19(a)(2)(iii) if the disclosure is accurate under § 226.19(a)(2)(iv). If a change occurs that does not render the annual percentage rate inaccurate and no other change occurs, the creditor must disclose the changed terms before consummation, consistent with § 226.17(f).

2. *Content of corrected disclosures.* Disclosures made under § 226.19(a)(2)(iii) must contain each of the applicable disclosures required by § 226.38.

3. *Estimates.* In disclosures provided under § 226.19(a)(2)(iii), only the disclosures required by §§ 226.38(c)(3)(i)(C), 226.38(c)(3)(ii)(C), 226.38(c)(6)(i) and 226.38(e)(5)(i) may be estimates. See comment 19(a)(2)(ii)–3 for a discussion of which of the disclosures required under § 226.38 creditors may estimate.

4. *Timing.* The creditor must provide the corrected disclosures so that the consumer receives them not later than the third business day before consummation. For example, for consummation to occur on

Saturday, June 13, the consumer must receive the disclosures on or before Wednesday, June 10.◀

[*19(a)(2)(ii) Three-business-day waiting period.*

1. *Conditions for redisclosure.* If, at the time of consummation, the annual percentage rate disclosed is accurate under § 226.22, the creditor does not have to make corrected disclosures under § 226.19(a)(2). If, on the other hand, the annual percentage rate disclosed is not accurate under § 226.22, the creditor must make corrected disclosures of all changed terms (including the annual percentage rate) so that the consumer receives them not later than the third business day before consummation. For example, assume consummation is scheduled for Thursday, June 11 and the early disclosures for a regular mortgage transaction disclose an annual percentage rate of 7.00%.

i. On Thursday, June 11, the annual percentage rate will be 7.10%. The creditor is not required to make corrected disclosures under § 226.19(a)(2).

ii. On Thursday, June 11, the annual percentage rate will be 7.15%. The creditor must make corrected disclosures so that the consumer receives them on or before Monday, June 8.

2. *Content of new disclosures.* If redisclosure is required, the creditor may provide a complete set of new disclosures, or may redisclose only the changed terms. If the creditor chooses to provide a complete set of new disclosures, the creditor may but need not highlight the new terms, provided that the disclosures comply with the format requirements of § 226.17(a). If the new creditor chooses to disclose only the new terms, all the new terms must be disclosed. For example, a different annual percentage rate will almost always produce a different finance charge, and often a new schedule of payments; all of these changes would have to be disclosed. If, in addition, unrelated terms such as the amount financed or prepayment penalty vary from those originally disclosed, the accurate terms must be disclosed. However, no new disclosures are required if the only inaccuracies involve estimates other than the annual percentage rate, and no variable-rate feature has been added. *See* § 226.17(f). For a discussion of the requirement to redisclose when a variable-rate feature is added, see comment 17(f)–2. For a discussion of redisclosure requirements in general, see the commentary on § 226.17(f).

3. *Timing.* When redisclosures are necessary because the annual percentage rate has become inaccurate, they must be received by the consumer no later than the third business day before consummation. (For redisclosures triggered by other events, the creditor must provide corrected disclosures before consummation. *See* § 226.17(f).) If the creditor delivers the corrected disclosures to the consumer in person, consummation may occur any time on the third business day following delivery. If the creditor provides the corrected disclosures by mail, the consumer is considered to have received them three business days after they are placed in the mail, for purposes of determining when the three-business-day waiting period required under § 226.19(a)(2)(ii) begins. Creditors that use electronic mail or a courier other than the postal service may also follow this approach.

4. *Basis for annual percentage rate comparison.* To determine whether a creditor must make corrected disclosures under § 226.22, a creditor compares (a) what the annual percentage rate will be at consummation to (b) the annual percentage rate stated in the most recent disclosures the creditor made to the consumer. For example, assume consummation for a regular mortgage transaction is scheduled for Thursday, June 11, the early disclosures provided in May stated an annual percentage rate of 7.00%, and corrected disclosures received by the consumer on Friday, June 5 stated an annual percentage rate of 7.15%:

i. On Thursday, June 11, the annual percentage rate will be 7.25%, which exceeds the most recently disclosed annual percentage rate by less than the applicable tolerance. The creditor is not required to make additional corrected disclosures or wait an additional three business days under § 226.19(a)(2).

ii. On Thursday, June 11, the annual percentage rate will be 7.30%, which exceeds the most recently disclosed annual percentage rate by more than the applicable tolerance. The creditor must make corrected disclosures such that the consumer receives them on or before Monday, June 8.]

Alternative 2—Paragraph 19(a)(2)(iii)

▶*19(a)(2)(iii) Additional three-business-day waiting period.*

1. *Conditions for corrected disclosures.* If the annual percentage rate disclosed under § 226.19(a)(2)(ii) changes so that it is not accurate under § 226.19(a)(2)(iv) or an adjustable-rate feature is added (*see* comment 17(f)–2), the creditor must make corrected disclosures of all changed terms (including the annual percentage rate) so that the consumer receives them not later than the third business day before consummation. (If a change occurs that does not render the annual percentage rate on the early disclosures inaccurate, the creditor must disclose the changed terms before consummation, consistent with § 226.17(f).) For an example illustrating whether or not and by when a consumer must receive corrected disclosures when a disclosed annual percentage rate changes, see comment 19(a)(2)(iii)–4.◀

[*19(a)(2)(ii) Three-business-day waiting period.*

1. *Conditions for redisclosure.* If, at the time of consummation, the annual percentage rate disclosed is accurate under § 226.22, the creditor does not have to make corrected disclosures under § 226.19(a)(2). If, on the other hand, the annual percentage rate disclosed is not accurate under § 226.22, the creditor must make corrected disclosures of all changed terms (including the annual percentage rate) so that the consumer receives them no later than the third business day before consummation. For example, assume consummation is scheduled for Thursday, June 11 and the early disclosures for a regular mortgage transaction disclose an annual percentage rate of 7.00%:

i. On Thursday, June 11, the annual percentage rate will be 7.10%. The creditor is not required to make corrected disclosures under § 226.19(a)(2).

ii. On Thursday, June 11, the annual percentage rate will be 7.15%. The creditor must make corrected disclosures so that the consumer receives them on or before Monday, June 8.]

2. *Content of* [*new*]▶*corrected*◀ *disclosures.* If redisclosure is required ▶under § 226.19(a)(2)(iii)◀, the creditor may provide a complete set of new disclosures, or may redisclose only the changed terms ▶together with the disclosures required by § 226.38(f) and (g)◀. If the creditor chooses to provide a complete set of new disclosures, the creditor may but need not highlight the new terms, provided that the disclosures comply with the format requirements of § 226.17(a) ▶and § 226.37◀. If the new creditor chooses to disclose only the new terms, all the new terms must be disclosed. For example, a different annual percentage rate will almost always produce [a different finance charge, and often a new schedule of payments]▶different interest and settlement charges, and often a new payment summary◀; all of these changes would have to be disclosed. If, in addition, unrelated terms such as the amount financed or prepayment penalty vary from those originally disclosed ▶or an adjustable-rate feature is added (*see* comment 17(f)–2)◀, the accurate terms must be disclosed. [However, no new disclosures are required if the only inaccuracies involve estimates other than the annual percentage rate, and no variable-rate feature has been added. For a discussion of the requirement to redisclose when a variable-rate feature is added, see comment 17(f)–2. For a discussion of redisclosure requirements in general, see the commentary on § 226.17(f).]

[3. *Timing.* When redisclosures are necessary because the annual percentage rate has become inaccurate, they must be received by the consumer no later than the third business day before consummation. (For redisclosures triggered by other events, the creditor must provide corrected disclosures before consummation. *See* § 226.17(f).) If the creditor delivers the corrected disclosures to the consumer in person, consummation may occur any time on the third business day following delivery. If the creditor provides the corrected disclosures by mail, the consumer is considered to have received them three business days after they are placed in the mail, for purposes of determining when the three-business-day waiting periods required under § 226.19(a)(2)(ii) begins. Creditors that use electronic mail or a courier other than the postal service may also follow this approach.]

▶3. *Estimates.* In disclosures provided under § 226.19(a)(2)(iii), only the disclosures required by §§ 226.38(c)(3)(i)(C), 226.38(c)(3)(ii)(C), 226.38(c)(6)(i) and 226.38(e)(5)(i) may be estimates. See comment 19(a)(2)(ii)–3 for a discussion of which of the disclosures required under § 226.38 creditors may estimate.◀

4. *Basis for annual percentage rate comparison.* To determine whether a creditor

must make corrected disclosures under [§ 226.22[▶§ 226.19(a)(2)(iii)◀, a creditor compares (a) what the annual percentage rate will be at consummation to (b) the annual percentage rate stated in the most recent disclosures the creditor made to the consumer. For example, assume consummation for a regular mortgage transaction is scheduled for Thursday, June 11, the early disclosures provided in May stated an annual percentage rate of 7.00%, and [corrected]▶new◀ disclosures received by the consumer on Friday, June 5 stated an annual percentage rate of 7.15%:

i. On Thursday, June 11, the annual percentage rate will be 7.25%, which exceeds the most recently disclosed annual percentage rate ▶of 7.15%◀ by less than the [applicable] tolerance ▶for a regular transaction under § 226.22(a)(2)◀. The creditor is not required to make additional corrected disclosures or wait an additional three business days under § 226.19(a)(2).

ii. On Thursday, June 11, the annual percentage rate will be 7.30%, which exceeds the most recently disclosed annual percentage rate ▶of 7.15%◀ by more than the [applicable tolerance. The]▶tolerance for a regular transaction under § 226.22(a)(2). If the most recently disclosed annual percentage rate of 7.15% is not accurate under § 226.22(a)(4) or (5) and no other tolerance applies under § 226.19(a)(2)(iv), the◀ creditor must make corrected disclosures such that the consumer receives them on or before Monday, June 8.

▶*19(a)(2)(iv) Annual percentage rate accuracy.*

1. *Other changed terms.* If a change occurs that does not render the APR inaccurate under § 226.19(a)(iv), the creditor must disclose the changed terms before consummation, consistent with § 226.17(f).

19(a)(2)(v) Timing of receipt.

1. *General.* If the creditor delivers the disclosures required by § 226.19(a)(2)(ii) or (a)(2)(iii) to the consumer in person, consummation may occur any time on the third business day following delivery. If the creditor provides the disclosures required by § 226.19(a)(2)(ii) or (a)(2)(iii) of this section by mail, the consumer is considered to have received them three business days after they are placed in the mail, for purposes of determining when the three-business-day waiting periods required under § 226.19(a)(2)(ii) and (iii) begin. Creditors that use electronic mail or a courier to provide disclosures may also follow this approach. Whatever method is used to provide disclosures, creditors may rely on documentation of receipt in determining when the three-business-day waiting period begins.◀

19(a)(3) Consumer's waiver of waiting period before consummation.

1. [*Modification or waiver.*]▶*Procedure.*◀ A consumer may modify or waive the right to a waiting period required by § 226.19(a)(2) only after the [creditor makes the disclosures required by § 226.18]▶consumer receives the disclosures required by § 226.38◀. [The consumer must have a *bona fide* personal financial emergency that necessitates consummating the credit transaction before the end of the waiting period. Whether these conditions are met is determined by the facts surrounding individual situations. The imminent sale of the consumer's home at foreclosure, where the foreclosure sale will proceed unless loan proceeds are made available to the consumer during the waiting period, is one example of a *bona fide* personal financial emergency. Each consumer who is primarily liable on the legal obligation must sign the written statement for the waiver to be effective.]▶After receiving the required disclosures, the consumer may waive or modify a waiting period by giving the creditor a dated, written statement that specifically waives or modifies the waiting period and describes the *bona fide* personal financial emergency. A waiver is effective only if each consumer primarily liable on the legal obligation signs a waiver statement. Where there are multiple consumers entitled to rescind, the consumers may, but need not, sign the same waiver statement.◀

▶2. *Bona fide personal financial emergency.* To modify or waive a waiting period, there must be a *bona fide* personal financial emergency that requires disbursement of loan proceeds before the end of the waiting period. Whether there is a *bona fide* personal financial emergency is determined by the facts surrounding individual circumstances. A *bona fide* personal financial emergency typically, but not always, will involve imminent loss of or harm to a dwelling or harm to the health or safety of a natural person. A waiver is not effective if the consumer's statement is inconsistent with facts known to the creditor. To determine whether circumstances are or are not a *bona fide* personal financial emergency under § 226.19(a)(3), creditors may rely on the examples and other commentary provided in comment 23(e)–2.◀

[2. *Examples of waivers within the seven-business-day waiting period.* Assume the early disclosures are delivered to the consumer in person on Monday, June 1, and at that time the consumer executes a waiver of the seven-business-day waiting period (which would end on Tuesday, June 9) so that the loan can be consummated on Friday, June 5:

i. If the annual percentage rate on the early disclosures is inaccurate under § 226.22, the creditor must provide a corrected disclosure to the consumer before consummation, which triggers the three-business-day waiting period in § 226.19(a)(2)(ii). After the consumer receives the corrected disclosure, the consumer must execute a waiver of the three-business-day waiting period in order to consummate the transaction on Friday, June 5.

ii. If a change occurs that does not render the annual percentage rate on the early disclosures inaccurate under § 226.22, the creditor must disclose the changed terms before consummation, consistent with § 226.17(f). Disclosure of the changed terms does not trigger the additional waiting period, and the transaction may be consummated on June 5 without the consumer giving the creditor an additional modification or waiver.]

3. [*Examples of waivers made after the seven-business-day waiting period.* Assume the early disclosures are delivered to the consumer in person on Monday, June 1 and consummation is scheduled for Friday, June 19.]▶ *Examples of effect on consummation timing.* Assume consummation is scheduled for Friday, June 19, the disclosures required by § 226.19(a)(1)(i) are delivered to the consumer in person on Monday, June 1, and the consumer receives the disclosures required by § 226.19(a)(2)(ii) on Monday, June 15.◀ On Wednesday, June 17, a change in the annual percentage rate occurs:

i. If the annual percentage rate on the [early] disclosures ▶required by § 226.19(a)(2)(ii)◀ is [inaccurate under § 226.22]▶not accurate under § 226.22 nor accurate under § 226.19(a)(2)(iv)◀, the creditor must provide a corrected disclosure before consummation, which triggers the three-business-day-waiting period in § 226.19(a)(2)▶(iii)◀. After the consumer receives the corrected disclosure, the consumer must execute a waiver of the three-business-day waiting period in order to consummate the transaction on Friday, June 19.

ii. If a change occurs that does not render the annual percentage rate on the [early] disclosures ▶required by § 226.19(a)(2)(ii)◀ inaccurate under § 226.22, the creditor must disclose the changed terms before consummation, consistent with § 226.17(f). Disclosure of the changed terms does not trigger an additional waiting period, and the transaction may be consummated on Friday, June 19 without the consumer giving the creditor an additional modification or waiver.

19(a)(4) [*Notice.*]▶Timeshare plans.◀

1. *Inclusion in other disclosures.* The notice required by § 226.19(a)(4) must be grouped together with the disclosures required by § 226.19(a)(1)(i) or § 226.19(a)(2). See comment 17(a)(1)–2 for a discussion of the rules for segregating disclosures. In other cases, the notice set forth in § 226.19(a)(4) may be disclosed together with or separately from the disclosures required under § 226.18. *See* comment 17(a)(1)–5(xvi).]

19(a)[*(5)*]▶*4*◀*(ii) Time of disclosures for timeshare plans.*

1. *Timing.* A mortgage transaction secured by a consumer's interest in a "timeshare plan," as defined in 11 U.S.C. 101(53D), [that is also a Federally related mortgage loan under RESPA] is subject to the requirements of § 226.19(a)[(5)]▶(4)◀ instead of the requirements of § 226.19(a)(1) through § 226.19(a)[(4)]▶(3)◀. *See* comment 19(a)(1)(i)–1. Early disclosures for transactions subject to § 226.19(a)[(5)]▶(4)◀ must be given (a) before consummation or (b) within three business days after the creditor receives the consumer's written application, whichever is earlier. The general definition of "business day" in § 226.2(a)(6)—a day on which the creditor's offices are open to the public for substantially all of its business functions—applies for purposes of § 226.19(a)(5)(ii). *See* comment 2(a)(6)–1. These timing requirements are different from the timing requirements under § 226.19(a)(1)(i). Timeshare transactions covered by § 226.19(a)[(5)] may be consummated any time after the disclosures required by § 226.19(a)[(5)]▶(4)◀(ii) are provided.

2. *Use of estimates.* If the creditor does not know the precise credit terms, the creditor must base the disclosures on the best information reasonably available and indicate that the disclosures are estimates under § 226.17(c)(2). If many of the disclosures are estimates, the creditor may include a statement to that effect (such as "all numerical disclosures ❲except the late-payment disclosure❳ are estimates") instead of separately labeling each estimate. In the alternative, the creditor may label as an estimate only the items primarily affected by unknown information. (*See* the commentary to § 226.17(c)(2).) The creditor may provide explanatory material concerning the estimates and the contingencies that may affect the actual terms, in accordance with the commentary to § 226.17(a)(1)❲.❳►and § 226.37. The disclosures required by § 226.19(a)(2) may not contain estimates, however, with limited exceptions. See the commentary on § 226.19(a)(2) for a discussion of limitations on estimates in disclosures made under that subsection.◄

3. *Written application.* For timeshare transactions, creditors may rely on comment 19(a)(1)(i)–❲3❳►2◄ in determining whether a "written application" has been received.

4. *Denied or withdrawn applications.* For timeshare transactions, creditors may rely on comment 19(a)(1)(i)–❲4❳►3◄ in determining that disclosures are not required by § 226.19(a)❲(5)❳►(4)◄(ii) because the consumer's application will not or cannot be approved on the terms requested or the consumer has withdrawn the application.

5. *Itemization of amount financed.* For timeshare transactions, creditors may rely on comment 19(a)(1)(i)–❲5❳►4◄ in determining whether providing the good faith estimates of settlement costs required by RESPA satisfies the requirement of § 226.18(c) to provide an itemization of the amount financed.

19(a)❲(5)❳►4◄(iii) Redisclosure for timeshare plans.

1. *Consummation or settlement.* For extensions of credit secured by a consumer's timeshare plan, when corrected disclosures are required, they must be given no later than "consummation or settlement." "Consummation" is defined in § 226.2(a). "Settlement" is defined in Regulation X (24 CFR 3500.2(b)) and is subject to any interpretations issued by HUD. In some cases, a creditor may delay redisclosure until settlement, which may be at a time later than consummation. If a creditor chooses to redisclose at settlement, disclosures may be based on the terms in effect at settlement, rather than at consummation. For example, in a variable-rate transaction, a creditor may choose to base disclosures on the terms in effect at settlement, despite the general rule in comment ❲17(c)(1)–8❳►§ 226.17(c)(1)(iii)◄ that variable-rate disclosures ►generally◄ should be based on the terms in effect at consummation.

2. *Content of new disclosures.* Creditors may rely on comment 19(a)(2)(ii)–2 in determining the content of corrected disclosures required under § 226.19(a)❲(5)❳►(4)◄(iii).

19(b) ❲*Certain variable-rate transactions*❳►*Adjustable-rate loan program disclosures*◄.

❲1. *Coverage.* Section 226.19(b) applies to all closed-end variable-rate transactions that are secured by the consumer's principal dwelling and have a term greater than one year. The requirements of this section apply not only to transactions financing the initial acquisition of the consumer's principal dwelling, but also to any other closed-end variable-rate transaction secured by the principal dwelling. Closed-End variable-rate transactions that are not secured by the principal dwelling, or are secured by the principal dwelling but have a term of one year or less, are subject to the disclosure requirements of § 226.18(f)(1) rather than those of § 226.19(b). (Furthermore, "shared-equity" or "shared-appreciation" mortgages are subject to the disclosure requirements of § 226.18(f)(1) rather than those of § 226.19(b) regardless of the general coverage of those sections.) For purposes of this section, the term of a variable-rate demand loan is determined in accordance with the commentary to § 226.17(c)(5). In determining whether a construction loan that may be permanently financed by the same creditor is covered under this section, the creditor may treat the construction and the permanent phases as separate transactions with distinct terms to maturity or a single combined transaction. For purposes of the disclosures required under § 226.18, the creditor may nevertheless treat the two phases either as separate transactions or as a single combined transaction in accordance with § 226.17(c)(6). Finally, in any assumption of a variable-rate transaction secured by the consumer's principal dwelling with a term greater than one year, disclosures need not be provided under §§ 226.18(f)(2)(ii) or 226.19(b).❳

►1. *Coverage.* Section 226.19(b) applies to all closed-end adjustable-rate mortgages described in § 226.38(a)(3)(i) that are secured by real property or a dwelling, except for reverse mortgages subject to § 226.33(a). Closed-End adjustable-rate transactions that are not secured by real property or a dwelling are subject to the disclosure requirements of § 226.18(f) rather than those of § 226.19(b). In determining whether a construction loan that may be permanently financed by the same creditor is covered under this section, the creditor may treat the construction and the permanent phases as separate transactions with distinct terms to maturity or a single combined transaction. *See* comment 17(c)(6)–2. In any assumption of an adjustable-rate transaction secured by real property or a dwelling, disclosures need not be provided under § 226.19(b).◄

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Section 226.20—Subsequent Disclosure Requirements

►*20(a) Modifications to terms by the same creditor.*

20(a)(1) Mortgages.

Paragraph 20(a)(1)(i).

1. *Coverage.* Section 226.20(a)(1) describes certain modifications to the terms of an existing legal obligation by the "same creditor" that are new transactions requiring a complete new set of disclosures. "Same creditor" is defined for purposes of this section as the current holder of an existing obligation secured by real property or a dwelling, or the servicer acting on behalf of such current holder. *See* § 226.20(a)(1)(iii). All other creditors that enter into an agreement to extend credit covered by TILA also must make the disclosures required under this part (for example, the disclosures required by §§ 226.19 and 226.38), and are otherwise subject to all applicable provisions of this part.

2. *Transactions not covered.* A modification to the terms of the existing legal obligation by the same creditor and same consumer is a new transaction under § 226.20(a)(1) only if one or more of the modifications listed in § 226.20(a)(1)(i)(A)–(G) occurs. For example, if the creditor changes the payment schedule under an existing legal obligation by adjusting the payment frequency from monthly to bi-weekly, with no other modification to the terms listed under § 226.20(a)(1)(i)(A)–(G), a new transaction under § 226.20(a)(1) does not occur. In addition, § 226.20(a)(1) applies only if the modification rises to the level of a change in the terms of the existing legal obligation, unless a fee is imposed on the consumer in connection with the modification, regardless of whether the fee is reflected in any agreement between the parties. (See § 226.17(c)(1) and corresponding commentary for a discussion of the "legal obligation.") For example, the following are modifications that do not result in a change in the terms of the existing legal obligation, provided that no fee is imposed in connection with the modification:

i. A creditor informally permits the consumer to defer payments from time to time, for instance to take account of holiday seasons or seasonal employment;

ii. A creditor enters into an informal arrangement with the consumer to change the monthly payment amount owed, for instance by allowing the consumer to make interest-only payments for 6 months and subsequently increasing the monthly payment amount owed for the remainder of the loan term to account for the 6 months of unpaid principal amount; or

iii. A creditor informally extends the consumer's payment due date by giving the consumer an additional 30 days to make a monthly payment amount that is due.

3. *New transaction requirements.* A new transaction under § 226.20(a)(1) requires a complete set of new disclosures and is subject to all applicable provisions of this part. For example:

i. If the same creditor adds an adjustable-rate feature to an existing legal obligation, the disclosures required under § 226.19(b) must be given at the time of application (see comment 20(a)(1)(i)–4) or before the consumer pays a nonrefundable fee, whichever is earlier, in addition to disclosures required under §§ 226.19(a) and 226.38;

ii. If the same creditor increases the interest rate of an existing legal obligation which results in the new transaction being a higher-priced mortgage loan under § 226.35(a), the creditor must provide a complete set of new disclosures and comply with the requirements under § 226.35(b);

iii. If the same creditor advances new money under an existing legal obligation secured by the consumer's principal dwelling, a new transaction occurs under § 226.20(a)(1)(i)(A) and is subject to rescission under § 226.23, whether the creditor is the original creditor or an assignee. *See* § 226.23(f)(2). In this case, the creditor must provide to the consumer the rescission notice required under § 226.23(b) in addition to the disclosures required under §§ 226.19 and 226.38. (See §§ 226.23(f)(2) and corresponding commentary for a discussion of advance of new money);

iv. If the same creditor adds a security interest in the consumer's principal dwelling to an existing legal obligation, a new transaction under § 226.20(a)(1)(i)(G) occurs and is subject to rescission under § 226.23, whether the creditor is the original creditor or an assignee. In this case, the creditor must provide to the consumer the rescission notice required under § 226.23(b) in addition to the disclosures required under §§ 226.19 and 226.38. (See § 226.23(a)(1) and corresponding commentary for a discussion of addition of a security interest); or

v. If the same creditor extends the loan term of an existing legal obligation (*i.e.,* renews the loan), and imposes a fee in connection with the modification, a new transaction under § 226.20(a)(1)(i)(C) occurs that requires new disclosures. The transaction is not subject to rescission if the same creditor (current holder) is also the original creditor. (See § 226.23(f)(2) for a discussion of the exemption from rescission for refinancings.) In this case, the creditor must provide to the consumer the disclosures required under §§ 226.19 and 226.38, but need not provide a rescission notice.

4. *Application.* Creditors may rely on comment 19(a)(1)(i)–2 in determining when a written application is received for a new transaction covered by this subsection. Comment 19(a)(1)(i)–2 provides, in part, that an application is received when the consumer submits the information set forth in the definition of "application" in Regulation X (see 24 CFR 3500.2(b)). In some cases, the consumer may not need to submit information to the creditor to make a "written application" for a modification. For example, where a consumer contacts the same creditor to modify a term of an existing legal obligation, the creditor may have information on file that constitutes an "application." Whether the creditor requests the information from the consumer anew or uses information on file, an application is deemed received where the creditor has the information set forth in the definition of "application" as defined under Regulation X. *See* 24 CFR § 3500.2(b).

5. *Denied or withdrawn applications.* A creditor must deliver or mail an early disclosure of credit terms to the consumer not later than three business days after the creditor receives an application for a modification. (See § 226.19(a)(1)(i) and corresponding commentary for the early disclosure timing requirements.) Within this three-business-day period, the creditor may determine that an application for a modification to the terms of an existing legal obligation will not be approved on the terms requested, or a consumer may withdraw an application. In these cases, the creditor need not make the early disclosures required by § 226.19(a)(1)(i). (See comment 19(a)(1)(i)–3 for further discussion of denied or withdrawn applications. See also 12 CFR 202.9(a) and corresponding commentary regarding adverse action notice requirements under ECOA and Regulation B.)

Paragraph 20(a)(1)(i)(A).

1. *General.* Under § 226.20(a)(1), an increase in the loan amount occurs when the new loan amount exceeds the unpaid principal balance plus any earned unpaid finance charge or earned unpaid non-finance charge, such as a late fee, on the existing obligation. (See § 226.38(a)(1) for the meaning of "loan amount.")

2. *Costs of the transaction.* An increase in the loan amount includes any cost of the transaction, such as points, appraisal or attorney's fees, title examination and insurance fees, or new insurance premiums, that are paid out of the proceeds of the new loan amount, except amounts that are used to fund an escrow account. (See comments 20(a)(1)(i)(A)–3 regarding escrows and 20(a)(1)(i)(B)–2 regarding fees.) For example, if the sum of the outstanding principal balance plus the earned unpaid finance charge is $200,000 and the new loan amount is $203,000, a new transaction requiring new disclosures would occur under § 226.20(a)(1), even where the extra $3,000 is attributable solely to costs of the transaction and no other modifications to terms listed in §§ 226.20(a)(1)(i)(A)–(G) occur.

3. *Escrows.* Amounts that are advanced to the consumer to fund an existing or newly-established escrow account are not included in the determination of whether there is an increase in the loan amount under § 226.20(a)(1)(i)(A). For purposes of this paragraph 20(a)(1)(i)(A), "escrow account" has the same meaning as in 24 CFR 3500.17(b), as amended.

Paragraph 20(a)(1)(i)(B).

1. *General.* Imposing a fee on the consumer in connection with the agreement to modify an existing legal obligation results in a new transaction under § 226.20(a)(1)(i)(B). That is, the fee does not need to be part of the new contractual arrangement to constitute an event that results is a new transaction under § 226.20(a)(1)(i)(B).

2. *Payment and types of fees.* A fee imposed on the consumer in connection with the agreement to modify the existing legal obligation includes any fee that is paid out of the proceeds of the new loan amount or paid directly by the consumer out-of-pocket, except amounts that are used to fund an escrow account. *See* comment 20(a)(1)(i)(A)–3. Fees imposed on the consumer in connection with the agreement include, for example, points, credit report, appraisal and underwriting fees, or new insurance premiums. Charging an insurance premium for the continuation of coverage does not constitute a fee under § 226.20(a)(1)(i). That is, if a creditor does not impose on the consumer additional insurance premiums or new insurance requirements (for example, if the creditor does not increase the existing premium for hazard insurance or require increased property insurance amounts), but merely continues coverage, such costs are not fees imposed on the consumer in connection with the agreement under § 226.20(a)(1)(i). (See § 226.19(a)(1)(ii) and corresponding commentary regarding restrictions on the imposition of fees.)

3. *Timing.* Creditors may rely on comment 19(a)(1)(i)–2 regarding when a written application is received for a new transaction covered by this subsection. (See comment 20(a)(1)(i)–4 for a discussion of application.)

Paragraph 20(a)(1)(i)(C).

1. *General.* A change in loan term occurs when the maturity date of the new transaction is earlier or later than the maturity date of the existing legal obligation. For example, a change in loan term occurs, and a new transaction results under § 226.20(a)(1)(i)(C), if the existing obligation has a maturity date of June 30, 2020, and the creditor agrees to modify the existing legal obligation to extend the maturity date by three years to June 30, 2023. (See § 226.38(a)(2) for the meaning of "loan term.")

Paragraph 20(a)(1)(i)(D).

1. *General.* Section 226.20(a)(1)(i)(D) applies to any change in rate, including both increases and decreases in the interest rate, except as provided under § 226.20(a)(1)(ii)(C). A change in rate occurs for purposes of § 226.20(a)(1)(i)(D) when the interest rate (the fully-indexed rate for an adjustable-rate mortgage) for the new obligation is different than the interest rate for the existing obligation that is in effect within a reasonable period of time of the modification. For example, 30 calendar days would be a reasonable period of time. The following example illustrates the rule. Assume that on June 15, 2010, the existing legal obligation is a 5/1 ARM that currently provides for a fully-indexed interest rate of 6 percent, which adjusts annually according to changes in the one-year LIBOR index. The next adjustment is scheduled for September 1, 2010. The same creditor and same consumer consummate an agreement on July 1, 2010, to modify the existing legal obligation to provide for a 3 percent introductory rate, that will adjust to the fully-indexed rate of 6.25 percent after 6 months, and annually thereafter according to changes in the one-year LIBOR index. A change in rate occurs under § 226.20(a)(1)(i)(D) because the fully-indexed rate on the new transaction is 6.25 percent, which is different than the 6 percent interest rate in effect under the existing legal obligation within 30 calendar days of consummation of the modification. If, however, the fully-indexed rate on the new transaction at consummation is 6 percent and adjusts annually thereafter according to changes in the one-year LIBOR index, a change in rate does not occur under § 226.20(a)(1)(i)(D). (See § 226.38(c)(7)(iii) for the meaning of the term "fully-indexed rate," and § 226.38(a)(3)(i)(A) for the meaning of the term "adjustable-rate mortgage.")

2. *Rate calculation and limits.* A change in rate based on an adjustable-rate feature disclosed as required by § 226.38(e)(1)–(2) in connection with the existing obligation is not a new transaction under § 226.20(a)(1). For example, assume the disclosures for an existing adjustable-rate mortgage provide that the 5.25 percent introductory rate will expire after three years, adjust to 7.25 percent in the fourth year, and adjust annually thereafter

based on the one-year LIBOR index plus 2 percent with a lifetime cap of 12 percent. A change in rate made in accordance with these disclosures does not result in a new transaction under § 226.20(a)(1). However, a change in the interest rate of an existing legal obligation occurs where the same parties to an existing obligation modify, for example, the index or formula used (*e.g.,* from the one-year LIBOR to the 6-month Treasury), the margin (*e.g.,* from 2 percent to 1.5 percent), or rate limit (*e.g.,* from 12 percent to 15 percent) not previously disclosed in accordance with § 226.38(e)(1)–(2). One or more of these modifications results in a new transaction requiring new disclosures for purposes of § 226.20(a)(1).

Paragraph 20(a)(1)(i)(E).

1. *General.* An increase in the periodic payment amount based on payment change limits disclosed as required under § 226.38(e)(2) in connection with the existing legal obligation is not a new transaction under § 226.20(a)(1). For example, assume the disclosures for an existing fixed-rate mortgage with negative amortization provides for minimum payments that can increase by 5 percent each year for the first 10 years, and thereafter the full monthly principal and interest payments will be required for the remainder of the loan term. A change in the monthly payment amount owed in the seventh year that is made in accordance with these disclosures does not result in a new transaction under § 226.20(a)(1). However, an increase in the periodic payment amount owed under the existing legal obligation as a result of a change in any limitations on payment adjustments not previously disclosed in accordance with § 226.38(e)(2) is a new transaction requiring new disclosures. Using the same example as above, a new transaction requiring new disclosures occurs under § 226.20(a)(1) if the minimum payment owed in the seventh year is increased by 6 percent rather than by the disclosed 5 percent increase.

2. *Escrows.* Amounts that are advanced to the consumer to fund an existing or newly-established escrow account are not included in the determination of whether there is an increase in the periodic payment amount under § 226.20(a)(1)(i)(E). For purposes of this paragraph 20(a)(1)(i)(E), "escrow account" has the same meaning as in 24 CFR 3500.17(b), as amended.

Paragraph 20(a)(1)(i)(F).

1. *Adjustable-rate feature.* A creditor adds an adjustable-rate feature to an existing legal obligation by changing the index or formula used to adjust the rate to a different index or formula. A creditor does not add an adjustable-rate feature to an existing legal obligation if it changes the index or formula used to adjust the rate because the original index or formula becomes unavailable, as long as historical fluctuations in the original and replacement indices or formulas were substantially similar, and as long as the replacement index or formula will produce a rate similar to the rate that was in effect at the time the original index or formula became unavailable. If the replacement index or formula is newly established and therefore does not have any rate history, it may be used if it produces a rate substantially similar to the rate in effect when the original index or formula became unavailable.

2. *Other risk features.* A new transaction requiring new disclosures occurs where a creditor adds one or more of the following features or conditions to an existing legal obligation: prepayment penalty; interest-only; negative amortization; balloon payment; demand; no-documentation or low-documentation; or shared-equity or shared-appreciation.

20(a)(1)(ii) Exceptions.

Paragraph 20(a)(1)(ii)(A).

1. *Court agreements.* This exception includes, for example, agreements such as reaffirmations of debts discharged in bankruptcy, settlement agreements, and post-judgment agreements. (See commentary to § 226.2(a)(14) for a discussion of court-approved agreements that are not considered new extensions of "credit.")

Paragraph 20(a)(1)(ii)(B).

1. *Workout agreements.* An agreement entered into as a result of the consumer's default or delinquency includes, for example, forbearance, repayment or loan modification agreements. The exception under § 226.20(a)(1)(ii)(B) does not apply, however, if there is an increase in the loan amount or the interest rate, or a fee is imposed on the consumer in connection with the agreement. (See § 226.20(a)(1)(i)(B) and corresponding commentary regarding fees.)

Paragraph 20(a)(1)(ii)(C).

1. *Decreases in interest rate.* A decrease in the interest rate occurs if the contractual interest rate (the fully-indexed rate for an adjustable-rate mortgage) for the new loan at the time the new transaction is consummated is lower than the interest rate (the fully-indexed rate for an adjustable-rate mortgage) of the existing obligation in effect at the time of the modification. Section 226.20(a)(1)(ii)(C) provides that a decrease in the interest rate is not a new transaction under § 226.20(a)(1) under the following circumstances: No additional fees or other changes are made to the existing legal obligation, except that the payment schedule may reflect lower periodic payments or a lengthened maturity date. The exception in § 226.20(a)(1)(ii)(C) does not apply if the maturity date is shortened, or if the payment amount or number of payments is increased beyond that remaining on the existing transaction. For example, if a creditor lowers the interest rate of an existing legal obligation and retains the existing loan term of 30 years (resulting in lower monthly payments), no new disclosures are required. Similarly, if a creditor lowers the interest rate and also enters into a 6-month payment forbearance arrangement with the consumer, with those six months of payments to be added to the end of the loan term (resulting in a longer loan term), no new disclosures are required. However, a new transaction requiring new disclosures occurs if the creditor lowers the interest rate and shortens the loan term from, for example, 30 to 20 years. A new transaction requiring new disclosures also occurs if the creditor lowers the interest rate but adds a new term, such as a prepayment penalty, or imposes a fee on the consumer. (See comment 20(a)(1)(i)(C) for a discussion of changes in the loan term, comment 20(a)(1)(i)(D)–1 for a discussion of changes in the interest rate, and comment 20(a)(1)(i)(B)–1 regarding fees.)◄

20(a) ►(2)◄ Refinancings ►by the same creditor—Non-mortgage credit◄.

1. *Definition.* ►For transactions not secured by real property or a dwelling, a◄【A】 refinancing is a new transaction requiring a complete new set of disclosures. Whether a refinancing has occurred is determined by reference to whether the original obligation has been satisfied or extinguished and replaced by a new obligation, based on the parties' contract and applicable law. The refinancing may involve the consolidation of several existing obligations, disbursement of new money to the consumer or on the consumer's behalf, or the rescheduling of payments under an existing obligation. In any form, the new obligation must completely replace the prior one.

i. Changes in the terms of an existing obligation, such as the deferral of individual installments, will not constitute a refinancing unless accomplished by the cancellation of that obligation and the substitution of a new obligation.

ii. A substitution of agreements that meets the refinancing definition will require new disclosures, even if the substitution does not substantially alter the prior credit terms.

2. *Exceptions.* A ►non-mortgage◄ transaction is subject to § 226.20(a)►(2)◄ only if it meets the general definition of a refinancing. Section 226.20(a)►(2)◄ 【(1)】►(i)◄ through 【(5)】►(v)◄ lists 5 events that are not treated as refinancings, even if they are accomplished by cancellation of the old obligation and substitution of a new one.

3. *Variable-rate.* i. If a variable-rate feature was properly disclosed under the regulation, a rate change in accord with those disclosures is not a refinancing. For example, no new disclosures are required when the variable-rate feature is invoked on a renewable balloon-payment 【mortgage】►transaction◄ that was previously disclosed as a variable-rate transaction.

ii. Even if it is not accomplished by the cancellation of the old obligation and substitution of a new one, a new transaction subject to new disclosures results if the creditor either:

A. Increases the rate based on a variable-rate feature that was not previously disclosed; or

B. Adds a variable-rate feature to the obligation. A creditor does not add a variable-rate feature by changing the index of a variable-rate transaction to a comparable index, whether the change replaces the existing index or substitutes an index for one that no longer exists.

【iii. If either of the events in paragraph 20(a)3.ii.A. or ii.B. occurs in a transaction secured by a principal dwelling with a term longer than one year, the disclosures required under § 226.19(b) also must be given at that time.】

【4. *Unearned finance charge.* In a transaction involving precomputed finance charges, the creditor must include in the finance charge on the refinanced obligation any unearned portion of the original finance charge that is not rebated to the consumer or credited against the underlying obligation. For example, in a transaction with an add-on finance charge, a creditor advances new money to a consumer in a fashion that extinguishes the original obligation and replaces it with a new one. The creditor neither refunds the unearned finance charge on the original obligation to the consumer nor credits it to the remaining balance on the old obligation. Under these circumstances, the unearned finance charge must be included in the finance charge on the new obligation and reflected in the annual percentage rate disclosed on refinancing. Accrued but unpaid finance charges are included in the amount financed in the new obligation.]

[5]►4◄. *Coverage.* Section 226.20(a)►(2)◄ applies only to refinancings undertaken by the original creditor or a holder or servicer of the original obligation. A "refinancing" by any other person is a new transaction under the regulation, not a refinancing under this section.

Paragraph 20(a)[(1)]►(2)(i)◄

1. *Renewal.* This exception applies both to obligations with a single payment of principal and interest and to obligations with periodic payments of interest and a final payment of principal. In determining whether a new obligation replacing an old one is a renewal of the original terms or a refinancing, the creditor may consider it a renewal even if:

i. Accrued unpaid interest is added to the principal balance.

ii. Changes are made in the terms of renewal resulting from the factors listed in § 226.17(c)(3).

iii. The principal at renewal is reduced by a curtailment of the obligation.

Paragraph 20(a)(2)►(ii)◄

1. *Annual percentage rate reduction.* A reduction in the annual percentage rate with a corresponding change in the payment schedule is not a refinancing. If the annual percentage rate is subsequently increased (even though it remains below its original level) and the increase is effected in such a way that the old obligation is satisfied and replaced, new disclosures must then be made.

2. *Corresponding change.* A corresponding change in the payment schedule to implement a lower annual percentage rate would be a shortening of the maturity, or a reduction in the payment amount or the number of payments of an obligation. The exception in § 226.20(a)(2)►(ii)◄ does not apply if the maturity is lengthened, or if the payment amount or number of payments is increased beyond that remaining on the existing transaction.

Paragraph 20(a)[(3)]►(2)(iii)◄

1. *Court agreements.* This exception includes, for example, agreements such as reaffirmations of debts discharged in bankruptcy, settlement agreements, and post-judgment agreements. (See the commentary to § 226.2(a)(14) for a discussion of court-approved agreements that are not considered "credit.")

Paragraph 20(a)[(4)]►(2)(iv)◄

1. *Workout agreements.* A workout agreement is not a refinancing unless the annual percentage rate is increased or additional credit is advanced beyond amounts already accrued plus insurance premiums.

Paragraph 20(a)[(5)]►(2)(v)◄

1. *Insurance renewal.* The renewal of optional insurance added to an existing credit transaction is not a refinancing, assuming that appropriate Truth in Lending disclosures were provided for the initial purchase of the insurance.

►*20(a)(3) Unearned finance charge.*

1. *Unearned finance charge.* In a transaction involving precomputed finance charges, the creditor must include in the finance charge on the new obligation any unearned portion of the original finance charge that is not rebated to the consumer or credited against the underlying obligation. For example, in a mortgage transaction with an add-on finance charge, a creditor increases the loan amount (or, in a non-mortgage transaction with an add-on finance charge, a creditor advances new money to a consumer) in a manner that extinguishes the original obligation and replaces it with a new one. The creditor neither refunds the unearned finance charge on the existing obligation to the consumer nor credits it to the remaining balance on the existing obligation. Under these circumstances, the unearned finance charge must be included in the finance charge on the new obligation and reflected in the annual percentage rate disclosed on the new obligation. Accrued but unpaid finance charges are included in the amount financed in the new obligation.◄

* * * * *

[*Paragraph 20(c) Variable-rate adjustments*]►*20(c) Rate adjustments.*◄

[1. *Timing of adjustment notices.* This section requires a creditor (or a subsequent holder) to provide certain disclosures in cases where an adjustment to the interest rate is made in a variable-rate mortgage transaction subject to § 226.19(b). There are two timing rules, depending on whether payment changes accompany interest rate changes. A creditor is required to provide at least one notice each year during which interest-rate adjustments have occurred without accompanying payment adjustments. For payment adjustments, a creditor must deliver or place in the mail notices to borrowers at least 25, but not more than 120, calendar days before a payment at a new level is due. The timing rules also apply to the notice required to be given in connection with the adjustment to the rate and payment that follows conversion of a transaction subject to § 226.19(b) to a fixed-rate transaction. (In cases where an open-end account is converted to a closed-end transaction subject to § 226.19(b), the requirements of this section do not apply until adjustments are made following conversion.)]

►1. *General.* Section 226.20(c) requires a creditor (or a subsequent holder) to provide certain disclosures in cases where an adjustment to the interest rate is made in an adjustable-rate mortgage subject to § 226.19(b). (For a discussion of "price level adjusted mortgages" and other mortgages not subject to § 226.19(b), *see* comment 19(b)–3.) Section 226.20(c) applies only if adjustments are made under the terms of the existing legal obligation between the parties. Typically, these adjustments will be made based on a change in the value of the applicable index or on the application of a formula. If an adjustment to the interest rate is made that is not based on the terms of the legal obligation, then no disclosures are required under § 226.20(c). Such an adjustment likely would require new TILA disclosures under § 226.20(a). For example, no disclosures are required under § 226.20(c) when an adjustment to the interest rate is made pursuant to a modification of the legal obligation, but such modification may be a new transaction for which the creditor must provide new disclosures under § 226.20(a). Further, disclosures must be given under § 226.20(c) if such new transaction is an adjustable-rate mortgage subject to § 226.19(b) and the interest rate is adjusted based on a change in the value of the applicable index or on the application of a formula. The following examples illustrate whether or not disclosures are required under § 226.20(c) in different circumstances:

i. *Disclosure required.* Assume that the loan agreement provides that the interest rate on an ARM subject to § 226.19(b) will be determined by the 1-year LIBOR plus a margin of 2.75 percentage points. Currently the consumer's interest rate is 6%, based on the index and margin. The loan agreement provides that the interest rate will adjust annually and the corresponding payment will be due on October 1. Assume that, when the adjusted interest rate is determined, the 1-year LIBOR for 2010 has increased by 2 percentage points over the 1-year LIBOR for 2009. Under the terms of the loan agreement, the interest rate will be adjusted to 8%, and the corresponding payment will be due on October 1, 2010. The creditor or holder must provide the notice required by § 226.20(c)(1) 60 to 120 days before the corresponding payment is due, that is, between June 3 and August 2, 2010. (Disclosures may be required before modification under § 226.20(a), however.)

ii. *Disclosure not required.* Assume the same loan agreement and facts as in the previous example, except that on January 4, 2010 the parties modify the loan agreement and the consumer pays a $500 modification fee. They agree that the consumer's current interest rate will be reduced temporarily from 6% to 4.5%, with the corresponding payment due on February 1, 2010. They also agree that after modification interest rate adjustments will continue to be made based on adjustments to the 1-year LIBOR and the corresponding payment will continue to be due on October 1. Assume that, when the adjusted interest rate is determined, the 1-year LIBOR for 2010 has increased by 2 percentage points over the 1-year LIBOR for 2009. Under the terms of the modified loan agreement, the interest rate will be adjusted to 8%, and the corresponding payment will be due on October 1, 2010.

A. The creditor need not send a notice under § 226.20(c)(1) 60 to 120 days before payment based on the interest rate of 4.5% is due on February 1 because the payment change is not made based on an interest rate adjustment provided for in the original loan agreement. Disclosures may be required under § 226.20(a) in connection with the modification, however.

B. The creditor must send a notice under § 226.20(c)(1) 60 to 120 days before payment based on the interest rate of 8% is due on October 1, that is, the creditor must send a notice between June 3 and August 2, 2010. This is because the payment due on October 1 is based on an interest rate adjusted based on a change to the index value and as provided for in the modified loan agreement.◄

2. [*Exceptions.*]►*Not applicable.*◄ Section 226.20(c) does not apply to [“shared-equity,” “shared-appreciation,” or “price level adjusted” or similar mortgages]►“price-level adjusted mortgages and certain other mortgages that are not adjustable-rate mortgages subject to the disclosure requirements of § 226.19(b). *See* comment 19(b)–3◄.

3. *Basis of disclosures.* The disclosures required under this section shall reflect the terms of the parties’ legal obligation, as required under § 226.17(c)(1).

►4. *Conversion.* Section 226.20(c) applies to adjustments made when an adjustable-rate mortgage subject to § 226.19(b) is converted to a fixed-rate mortgage if the existing legal obligation provides for such conversion and establishes an index or formula to be used to determine the interest rate upon conversion. New disclosures instead may be required under § 226.20(a), however, if the existing legal obligation does not provide for conversion or provides for conversion but does not state a specific index and margin or formula to be used to determine the new interest rate, or if the parties agree to change the index, margin, or formula to be used to determine the interest rate upon conversion. New disclosures may be required under § 226.20(a), moreover, if a conversion fee is charged (whether or not the existing legal obligation establishes the amount of the conversion fee) or loan terms other than the interest rate and corresponding payment are modified. If an open-end account is converted to a closed-end transaction subject to § 226.19(b), disclosures need not be provided under § 226.20(c) until adjustments subject to § 226.20(c) are made following conversion.◄

►*20(c)(1) Timing of disclosures.*

1. *When required.* Payment changes due to changes in property tax obligations or mortgage-related insurance premiums do not trigger the requirement to make disclosures under § 226.20(c)(1)(i).◄

[*Paragraph 20(c)(1)*]►*Paragraph 20(c)(2)(ii)*◄.

1. *Current and* [*prior*]►*new*◄ *interest rates.* The requirements under this paragraph are satisfied by disclosing the interest rate used to compute the new adjusted payment amount [(“current rate”)]►(“new rate”)◄ and the adjusted interest rate that was disclosed in the last adjustment notice[, as well as all other interest rates applied to the transaction in the period since the last notice (“prior rates”)]►(“current rate”)◄. (If there has been no prior adjustment notice, the [prior rates are]►current rate is◄ the interest rate applicable to the transaction at consummation►.)◄ [, as well as all other interest rates applied to the transaction in the period since consummation.) If no payment adjustment has been made in a year, the current rate is the new adjusted interest rate for the transaction, and the prior rates are the adjusted interest rate applicable to the loan at the time of the last adjustment notice, and all other rates applied to the transaction in the period between the current and last adjustment notices. In disclosing all other rates applied to the transaction during the period between notices, a creditor may disclose a range of the highest and lowest rates applied during that period.]

[*Paragraph 20(c)(2).*

1. *Current and prior index values.* This section requires disclosure of the index or formula values used to compute the current and prior interest rates disclosed in § 226.20(c)(1). The creditor need not disclose the margin used in computing the rates. If the prior interest rate was not based on an index or formula value, the creditor also need not disclose the value of the index that would otherwise have been used to compute the prior interest rate.]

[*Paragraph 20(c)(3)*]►*Paragraph 20(c)(2)(iv)*◄.

1. *Unapplied index increases.* The requirement that the consumer receive information about the extent to which the creditor has foregone any increase in the interest rate ►and the earliest date a creditor may apply foregone interest to future adjustments, subject to rate caps,◄ is applicable only to those transactions permitting interest rate carryover. The amount of increase that is foregone at an adjustment is the amount that, subject to rate caps, can be applied to future adjustments independently to increase, or offset decreases in, the rate that is determined according to the index or formula.

[*Paragraph 20(c)(4).*

1. *Contractual effects of the adjustment.* The contractual effects of an interest rate adjustment must be disclosed including the payment due after the adjustment is made whether or not the payment has been adjusted. A contractual effect of a rate adjustment would include, for example, disclosure of any change in the term or maturity of the loan if the change resulted from the rate adjustment. In transactions where paying the periodic payments will not fully amortize the outstanding balance at the end of the loan term and where the final payment will equal the periodic payment plus the remaining unpaid balance, the amount of the adjusted payment must be disclosed if such payment has changed as a result of the rate adjustment. A statement of the loan balance also is required. The balance required to be disclosed is the balance on which the new adjusted payment is based. If no payment adjustment is disclosed in the notice, the balance disclosed should be the loan balance on which the payment disclosed under § 226.20(c)(5) is based, if applicable, or the balance at the time the disclosure is prepared.]

[*Paragraph 20(c)(5)*]►*Paragraph 20(c)(2)(vi)*◄.

1. *Fully-amortizing payment.* This paragraph requires a disclosure ►of the fully amortizing payment◄ only when negative amortization occurs as a result of the adjustment. A disclosure is not required simply because a loan calls for non-amortizing or partially amortizing payments. For example, in a transaction with a five-year term and payments based on a longer amortization schedule, and where the final payment will equal the periodic payment plus the remaining unpaid balance, the creditor would not have to disclose the payment necessary to fully amortize the loan in the remainder of the five-year term. A disclosure is required, however, if the ►new◄ payment disclosed under [§ 226.20(c)(4)] ►§ 226.20(c)(2)(ii)(C)◄ is not sufficient to prevent negative amortization in the loan. The adjustment notice must state the payment required to prevent negative amortization. (This paragraph does not apply if the payment disclosed in [§ 226.20(c)(4)] ►§ 226.20(c)(2)(ii)(C)◄ is sufficient to prevent negative amortization in the loan but the final payment will be a different amount due to rounding.)

►2. *Effect on loan term.* The creditor must disclose any change in the term or maturity of the loan if the change resulted from the rate adjustment. The creditor need not make that disclosure if the loan term or maturity has not changed.◄

Paragraph 20(c)(2)(vii).

1. *Basis of disclosure.* A statement of the loan balance must be disclosed. The balance required to be disclosed is the balance on which the new adjusted payment is based.

Paragraph 20(c)(3)(iii).

1. *Unapplied index increases.* Creditors may rely on comment 20(c)(2)(iv)–1 in determining which transactions the requirement to disclose foregone interest increases applies to and how to disclose such increases. Although creditors must disclose the earliest date the creditor may apply foregone interest to future adjustments under § 226.20(c)(2)(iv), creditors need not disclose this information in the disclosures required by § 226.20(c)(3)(iii), which are made when interest rate changes do not cause payment changes during a year.

Paragraph 20(c)(3)(v).

1. *Basis of disclosure.* A statement of the loan balance must be disclosed. The balance required to be disclosed is the balance on the last day of the period for which the creditor discloses the highest and lowest interest rates.◄

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Section 226.22—Determination of the Annual Percentage Rate

22(a) Accuracy of the annual percentage rate.

►*22(a)(1) Actual annual percentage rate.*◄

Paragraph 22(a)(1)►*(i)*◄.

1. *Calculation method.* The regulation recognizes both the actuarial method and the United States Rule Method (U.S. Rule) as measures of an exact annual percentage rate. Both methods yield the same annual percentage rate when payment intervals are equal. They differ in their treatment of unpaid accrued interest.

2. *Actuarial method.* When no payment is made, or when the payment is insufficient to

pay the accumulated finance charge, the actuarial method requires that the unpaid finance charge be added to the amount financed and thereby capitalized. Interest is computed on interest since in succeeding periods the interest rate is applied to the unpaid balance including the unpaid finance charge. Appendix J provides instructions and examples for calculating the annual percentage rate using the actuarial method. ▶(The fact that § 226.38(e)(5)(ii) requires the "finance charge" to be disclosed as "interest and settlement charges" for purposes of mortgage transaction disclosures does not affect how an annual percentage rate is calculated using the actuarial method.)◀

3. *U.S. Rule.* The U.S. Rule produces no compounding of interest in that any unpaid accrued interest is accumulated separately and is not added to principal. In addition, under the U.S. Rule, no interest calculation is made until a payment is received.

4. *Basis for calculations.* When a transaction involves "step rates" or "split rates"—that is, different rates applied at different times or to different portions of the principal balance—a single composite annual percentage rate must be calculated and disclosed for the entire transaction. Assume, for example, a step-rate transaction in which a $10,000 loan is repayable in 5 years at 10 percent interest for the first 2 years, 12 percent for years 3 and 4, and 14 percent for year 5. The monthly payments are $210.71 during the first 2 years of the term, $220.25 for years 3 and 4, and $222.59 for year 5. The composite annual percentage rate, using a calculator with a "discounted cash flow analysis" or "internal rate of return" function, is 10.75 percent.

▶*Paragraph 22(a)(1)(ii).*◀

[5.]▶1.◀ *Good faith reliance on faulty calculation tools.* [Footnote 45d]▶Section 226.22(a)(1)(ii)◀ absolves a creditor of liability for an error in the ▶disclosed◀ annual percentage rate or finance charge that resulted from a corresponding error in a calculation tool used in good faith by the creditor. ▶(For a mortgage transaction, the finance charge is disclosed as the "interest and settlement charges" (*see* § 226.38(e)(5)(ii)).◀ Whether or not the creditor's use of the tool was in good faith must be determined on a case-by-case basis, but the creditor must in any case have taken reasonable steps to verify the accuracy of the tool, including any instructions, before using it. Generally, [the footnote]▶§ 226.22(a)(1)(ii)◀ is available only for errors directly attributable to the calculation tool itself, including software programs; it is not intended to absolve a creditor of liability for its own errors, or for errors arising from improper use of the tool, from incorrect data entry, or from misapplication of the law.

[*Paragraph*]*22(a)(2)*▶ *Regular transaction*◀.

1. [*Regular transactions*]▶*General*◀. The annual percentage rate for a regular transaction is considered accurate if it varies in either direction by not more than ⅛ of 1 percentage point from the actual annual percentage rate. For example, when the exact annual percentage rate is determined to be 10⅛%, a disclosed annual percentage rate from 10% to 10¼%, or the decimal equivalent, is deemed to comply with the regulation.

[*Paragraph*]*22(a)(3)*▶ *Irregular transaction*◀.

1. [*Irregular transactions*]▶*General*◀. The annual percentage rate for an irregular transaction is considered accurate if it varies in either direction by not more than ¼ of 1 percentage point from the actual annual percentage rate. This tolerance is intended for more complex transactions that do not call for a single advance and a regular series of equal payments at equal intervals. The ¼ of 1 percentage point tolerance may be used, for example, in a construction loan where advances are made as construction progresses, or in a transaction where payments vary to reflect the consumer's seasonal income ▶or due to changes in a premium for or termination of mortgage insurance◀. It may also be used in transactions with graduated payment schedules where the contract commits the consumer to several series of payments in different amounts. It does not apply, however, to loans with variable rate features where the initial disclosures are based on [a regular amortization schedule]▶having regular payment periods◀ over the life of the loan, even though payments may later change because of the variable rate feature.

22(a)(4) Mortgage loans.

1. *Example*▶*s.* i.◀ If a creditor improperly omits a $75 fee from the [finance charge]▶interest and settlement charges◀ on a regular transaction, the understated [finance charge is]▶interest and settlement charges are◀ considered accurate under [§ 226.18(d)(1)] ▶§ 226.38(e)(5)(ii)◀, and the annual percentage rate corresponding to [that understated finance charge also is considered accurate even if it falls]▶those interest and settlement charges also are considered accurate even if they fall◀ outside the tolerance of ⅛ of 1 percentage point provided under § 226.22(a)(2). Because a $75 error was made, ▶however,◀ an annual percentage rate corresponding to a $100 understatement of the [finance charge]▶interest and settlement charges◀ would not be considered accurate.

▶ii. If a creditor improperly includes a $200 fee in the interest and settlement charges on a regular transaction, the overstated interest and settlement charges are considered accurate under § 226.38(e)(5)(ii), and the annual percentage rate corresponding to those overstated interest and settlement charges is considered accurate even if it falls outside the tolerance of ⅛ of 1 percentage point provided under § 226.22(a)(2). Because a $200 error was made, however, an annual percentage rate corresponding to a $225 overstatement of the interest and settlement charges would not be considered accurate.

2. *Rescission purposes.* Section 226.22(a)(4)(ii)(B) does not establish a special tolerance for determining whether corrected disclosures are required for rescindable mortgage transactions under § 226.19(a)(2). The tolerances for interest and settlement charges under § 226.23▶(a)(5)(ii)◀[(g) and (h)] apply only when the consumer asserts the right of rescission under § 226.23.◀

22(a)(5) Additional tolerance for mortgage loans.

1. *Example*▶*s.* Section 226.22(a)(5)◀[. This paragraph] contains an additional tolerance for a disclosed annual percentage rate that is incorrect but is closer to the actual annual percentage rate than the rate that would be considered accurate under the tolerance in § 226.22(a)(4). To illustrate: In an irregular transaction subject to a ¼ of 1 percentage point tolerance[, if]▶—

i. If◀ the actual annual percentage rate is 9.00 percent and a $75 omission from the [finance charge]▶interest and settlement charges◀ corresponds to [a]▶an annual percentage◀ rate of 8.50 percent that is considered accurate under § 226.22(a)(4), a disclosed APR of 8.65 percent is within the tolerance in § 226.22(a)(5). In this example of [an understated finance charge]▶understated interest and settlement charges◀, a disclosed annual percentage rate below 8.50 ▶(the annual percentage rate that corresponds to the disclosed interest and settlement charges)◀ or above 9.25 percent ▶(the annual percentage rate that corresponds to the ¼ of 1 percentage tolerance for an irregular transaction)◀ would not be considered accurate.

▶ii. If the actual annual percentage rate is 9.00 percent and the improper inclusion of a $500 fee in the interest and settlement charges corresponds to an annual percentage rate of 9.40 percent that is considered accurate under § 226.22(a)(4), a disclosed annual percentage rate of 9.30 percent is within the tolerance in § 226.22(a)(5). In this example of overstated interest and settlement charges, a disclosed annual percentage rate below 8.75 percent (the annual percentage rate that corresponds to the ¼ of one percentage point tolerance for an irregular transaction) or above 9.40 percent (the annual percentage rate that corresponds to the disclosed interest and settlement charges) would not be considered accurate.◀

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Section 226.23—Right of Rescission

1. *Transactions not covered.* Credit extensions that are not subject to the regulation are not covered by § 226.23 even if a customer's principal dwelling is the collateral securing the credit. For example, the right of rescission does not apply to a business purpose loan, even though the loan is secured by the customer's principal dwelling.

23(a) Consumer's right to rescind.

[Paragraph] *23(a)(1)* ▶*Coverage.*◀

1. *Security interest arising from transaction.* ▶i.◀ In order for the right of rescission to apply, the security interest must be retained as part of the credit transaction. For example:

[•]▶A.◀ A security interest that is acquired by a contractor who is also extending the credit in the transaction.

[•]▶B.◀ A mechanic's or materialman's lien that is retained by a subcontractor or supplier of the contractor-creditor, even when the latter has waived its own security interest in the consumer's home.

▶ii.◀ The security interest is not part of the credit transaction and therefore the transaction is not subject to the right of rescission when, for example:

[•]▶A.◀ A mechanic's or materialman's lien is obtained by a contractor who is not a party to the credit transaction but is merely paid with the proceeds of the consumer's unsecured bank loan.

[•]►B.◄ All security interests that may arise in connection with the credit transaction are validly waived.

[•]►C.◄ The creditor obtains a lien and completion bond that in effect satisfies all liens against the consumer's principal dwelling as a result of the credit transaction.

►iii.◄ Although liens arising by operation of law are not considered security interests for purposes of disclosure under § 226.2, that section specifically includes them in the definition for purposes of the right of rescission. Thus, even though an interest in the consumer's principal dwelling is not a required disclosure under [§ 226.18(m)]►§ 226.38(f)(2)◄, it may still give rise to the right of rescission.

2. *Consumer.* To be a consumer within the meaning of § 226.2, that person must at least have an ownership interest in the dwelling that is encumbered by the creditor's security interest, although that person need not be a signatory to the credit agreement. For example, if only one spouse signs a credit contract, the other spouse is a consumer if the ownership interest of that spouse is subject to the security interest.

3. *Principal dwelling.* A consumer can only have one principal dwelling at a time. (But see comment 23(a)(1)–4.) A vacation or other second home would not be a principal dwelling. A transaction secured by a second home (such as a vacation home) that is not currently being used as the consumer's principal dwelling is not rescindable, even if the consumer intends to reside there in the future. When a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within one year or upon completion of construction, the new dwelling is considered the principal dwelling if it secures the acquisition or construction loan. In that case, the transaction secured by the new dwelling is a residential mortgage transaction and is not rescindable. For example, if a consumer whose principal dwelling is currently A builds B, to be occupied by the consumer upon completion of construction, a construction loan to finance B and secured by B is a residential mortgage transaction. Dwelling, as defined in § 226.2, includes structures that are classified as personalty under State law. For example, a transaction secured by a mobile home, trailer, or houseboat used as the consumer's principal dwelling may be rescindable.

4. *Special rule for principal dwelling.* Notwithstanding the general rule that consumers may have only one principal dwelling, when the consumer is acquiring or constructing a new principal dwelling, any loan subject to Regulation Z and secured by the equity in the consumer's current principal dwelling (for example, a bridge loan) is subject to the right of rescission regardless of the purpose of that loan. For example, if a consumer whose principal dwelling is currently A builds B, to be occupied by the consumer upon completion of construction, a construction loan to finance B and secured by A is subject to the right of rescission. A loan secured by both A and B is, likewise, rescindable.

5. *Addition of a security interest.* [Under footnote 47, the]►The◄ addition of a security interest in a consumer's principal dwelling to an existing obligation is rescindable even if the existing obligation is not satisfied and replaced by a new obligation, and even if the existing obligation was previously exempt (because it was credit over $25,000 not secured by real property or a consumer's principal dwelling). The right of rescission applies only to the added security interest, however, and not to the original obligation. [In those situations, only the § 226.23(b) notice need be delivered, not new material disclosures; the rescission period will begin to run from the delivery of the notice.]►Except as provided in § 226.20(a), the creditor need only deliver the § 226.23(b) notice, not new material disclosures. If the addition of a security interest in the consumer's principal dwelling is a new transaction under § 226.20(a)(1) or a refinancing under § 226.20(a)(2), then the creditor must deliver new material disclosures. The rescission period will begin to run from the delivery of the notice and, as applicable, the delivery of the material disclosures.◄

[*Paragraph*] *23(a)(2)► Exercise of the right.*

23(a)(2)(i) Provision of written notification.◄

1. *Consumer's exercise of right.* The consumer must exercise the right of rescission in writing ►and may, but is not required to, use◄ [but not necessarily on] the notice supplied under § 226.23(b). [Whatever the means of sending the notification of rescission—mail, telegram or other written means—the time period for the creditor's performance under § 226.23(d)(2) does not begin to run until the notification has been received. The creditor may designate an agent to receive the notification so long as the agent's name and address appear on the notice provided to the consumer under § 226.23(b). Where the creditor fails to provide the consumer with a designated address for sending the notification of rescission, delivering the notification to the person or address to which the consumer has been directed to send payments constitutes delivery to the creditor or assignee. State law determines whether delivery of the notification to a third party other than the person to whom payments are made is delivery to the creditor or assignee, in the case where the creditor fails to designate an address for sending the notification of rescission.]

►*23(a)(2)(ii) Party the consumer shall notify.*

23(a)(2)(ii)(B) After the three-business-day period following consummation.

1. *In general.* To exercise an extended right of rescission, the consumer must notify the current owner of the debt obligation. Under § 226.23(a)(2)(ii)(B), the current owner of the debt obligation is deemed to have received the consumer's notification if the consumer provides it to the servicer, as defined in § 226.36(c)(3). Therefore, the period for the creditor's or owner's actions in § 226.23(d)(2) begins on the day the servicer receives the consumer's notification.◄

[*Paragraph*] *23(a)(3) ►Rescission period.*

23(a)(3)(i) Three business days.◄

1. *Rescission period.* ►i.◄ The consumer's right to rescind does not expire until midnight after the third business day following the last of three events:

[•]►A.◄ Consummation of the transaction.

[•]►B.◄ Delivery of all material disclosures.

[•]►C.◄ Delivery to the consumer of the required rescission notice.

✖ For example, [if a transaction is consummated on Friday, June 1, and the disclosures and notice of the right to rescind were given on Thursday, May 31, the rescission period will expire at midnight of the third business day after June 1—that is,►assume the consumer received all material disclosures on Wednesday, May 23 and received the notice of the right to rescind on Thursday, May 31, and the transaction was consummated on Friday, June 1. The rescission period will expire on midnight after the third business day, which is◄ Tuesday, June 5. [In another example, if the disclosures are given and the transaction consummated on Friday, June 1, and the rescission notice is given on Monday, June 4, the rescission period expires at midnight of the third business day after June 4—that is Thursday, June 7. The consumer must place the rescission notice in the mail, file it for telegraphic transmission, or deliver it to the creditor's place of business within that period in order to exercise the right.]

►iii. The provision of incorrect or incomplete material disclosures or an incorrect or incomplete notice of the right to rescind does not constitute delivery of the disclosures or notice. If the creditor originally provided incorrect or incomplete material disclosures, to commence the three-business-day rescission period, the creditor must deliver to the consumer complete, correct material disclosures together with a complete, correct, updated notice of the right to rescind. If the creditor originally provided an incorrect or incomplete notice of the right to rescind, to commence the three-business-day rescission period, the creditor must deliver to the consumer a complete, correct, updated notice of the right to rescind. In either situation, the consumer would have three business days after proper delivery to rescind the transaction.◄

[2. *Material disclosures.* Footnote 48 sets forth the material disclosures that must be provided before the rescission period can begin to run. Failure to provide information regarding the annual percentage rate also includes failure to inform the consumer of the existence of a variable rate feature. Failure to give the other required disclosures does not prevent the running of the rescission period, although that failure may result in civil liability or administrative sanctions.]

[3.]►*23(a)(3)(ii)*◄ *Unexpired right of rescission.*

►*23(a)(3)(ii)(A) Up to three years.*◄

[When the creditor has failed to take the action necessary to start the three-business day rescission period running, the right to rescind automatically lapses on the occurrence of the earliest of the following three events:

• The expiration of three years after consummation of the transaction.

• Transfer of all the consumer's interest in the property.

• Sale of the consumer's interest in the property, including a transaction in which the consumer sells the dwelling and takes back a purchase money note and mortgage or retains legal title through a device such as an installment sale contract.❚

►1. *Transfer.* A◄ transfer of all the consumer's interest ►that terminates the right of rescission◄ includes ❚such❚ transfers ❚as bequests and❚►by operation of law following the consumer's death and by ◄ gift❚s❚. ❚A sale or transfer of the property need not be voluntary to terminate the right to rescind. For example, a foreclosure sale would terminate an unexpired right to rescind. As provided in section 125 of the Act, the three-year limit may be extended by an administrative proceeding to enforce the provisions of this section.❚ A partial transfer of the consumer's interest, such as a transfer bestowing co-ownership on a spouse, does not terminate the right of rescission. ►Filing for bankruptcy generally does not terminate the right of rescission if the consumer retains an interest in the property after the bankruptcy estate is created.

2. *Sale.* A sale of the consumer's interest in the property that terminates the right of rescission includes a transaction in which the consumer sells the dwelling and takes back a purchase money note and mortgage or retains legal title through a device such as an installment sale contract.

3. *Involuntary sale or transfer.* A sale or transfer of the property need not be voluntary to terminate the right to rescind. For example, a foreclosure sale would terminate an unexpired right to rescind.◄

❚*Paragraph*❚ *23(a)(4)*► *Joint Owners*◄.

1. ❚*Joint owners*❚► In general◄. When more than one consumer has the right to rescind a transaction, any of them may exercise that right and cancel the transaction on behalf of all. For example, if both husband and wife have the right to rescind a transaction, either spouse acting alone may exercise the right and both are bound by the rescission.

►23(a)(5) Definition of material disclosures.

Paragraph 23(a)(5)(i)

1. *In general.* The right to rescind generally does not expire until midnight after the third business day following the latest of (1) consummation, (2) delivery of the notice of the right to rescind, as set forth in § 226.23(b), or (3) delivery of all material disclosures, as set forth in § 226.23(a)(5)(i). *See* § 226.23(a)(3). A creditor must make the material disclosures clearly and conspicuously consistent with the requirements of §§ 226.32(c) and 226.38. A creditor may satisfy the requirements of § 226.32(c) by using the Section 32 Loan Model Clauses in Appendix H–16 of this part, or substantially similar disclosures. A creditor may satisfy the requirements of § 226.38 by providing the appropriate model form in Appendix H or, for reverse mortgages, Appendix K of this part, or a substantially similar disclosure, which is properly completed with the disclosures required by § 226.38. Failure to provide the required non-material disclosures does not affect the right of rescission, although such failure may be a violation subject to the liability provisions of section 130 of the Act, or administrative sanctions.

2. *Format.* Failing to satisfy any specific terminology or format requirements set forth in § 226.33 or § 226.37 or in the model forms in Appendix H or Appendix K is not by itself a failure to provide material disclosures. Nonetheless, a creditor must provide the material disclosures clearly and conspicuously, as described in § 226.37(a)(1) and comments 37(a)–1 and 37(a)(1)–1 and –2.

23(a)(5)(ii) Tolerance for accuracy of the interest and settlement charges.

1. *Current holder.* If there is no new advance of money and no consolidation of existing loans, a refinancing with the current holder who is not the original creditor is subject to the special tolerance for interest and settlement charges set forth in § 226.23(a)(5)(ii)(B). If there is no new advance of money, a new transaction under § 226.20(a)(1) with the original creditor who is the current holder is exempt from the right of rescission under § 226.23(f)(2).

2. *New advance.* The term *new advance* has the same meaning as in § 226.23(f)(2)(ii).

3. *Interest and settlement charges.* This section is based on the accuracy of the total interest and settlement charges as disclosed under § 226.33(c)(14)(ii) or § 226.38(e)(5)(ii) rather than the component charges, such as a document preparation fee.

23(a)(5)(iii) Tolerances for accuracy of the loan amount.

1. *HOEPA loans.* Paragraphs (a)(5)(iii)(A) and (B) provide certain tolerances for the loan amount. However, if the mortgage is subject to § 226.32, then the tolerance for the amount borrowed as provided in § 226.32(c)(5) would apply to the disclosure of the loan amount for purposes of rescission. For example, the loan amount for a HOEPA loan would be treated as accurate if it is not more than $100 above or below the amount required to be disclosed.

2. *Current holder.* If there is no new advance of money and no consolidation of existing loans, a refinancing with the current holder who is not the original creditor is subject to the special tolerance for the loan amount set forth in § 226.23(a)(5)(iii)(B). If there is no new advance of money, a new transaction under § 226.20(a)(1) with the original creditor who is the current holder is exempt from the right of rescission under § 226.23(f)(2).

3. *New advance.* The term *new advance* has the same meaning as in § 226.23(f)(2)(ii).

23(a)(5)(iv) Tolerances for accuracy of the total settlement charges, the prepayment penalty, and the payment summary.

1. *HOEPA loans.* Paragraph (a)(5)(iv) provides a tolerance for disclosure of the payment summary. However, if the mortgage is subject to § 226.32, then the tolerance for the regular payment as provided in § 226.32(c)(3) would apply. In a HOEPA loan, there is no tolerance for a payment other than the regular payment. Thus, the disclosure of the regular payment in the payment summary for a HOEPA loan is accurate if it based on a loan amount that is not more than $100 above or below the amount required to be disclosed. The disclosure of any other payment, such as the maximum monthly payment, is not subject to a tolerance.◄

23(b) Notice of right to rescind.

►23(b)(1) Who receives notice.◄

1. ❚*Who receives notice*❚►*In general.* i.◄ Each consumer entitled to rescind must be given:

❚•❚►A.◄ ❚Two copies of the❚ ►The◄ rescission notice.

❚•❚►B.◄ The material disclosures.

►ii.◄ ❚In❚►For example, in◄ a transaction involving joint owners, both of whom are entitled to rescind, both must receive the notice of the right to rescind and disclosures. [For example, if both spouses are entitled to rescind a transaction, each must receive two copies of the rescission notice (one copy to each if the notice is provided in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act) and one copy of the disclosures.]

❚2. *Format.* The notice must be on a separate piece of paper, but may appear with other information such as the itemization of the amount financed. The material must be clear and conspicuous, but no minimum type size or other technical requirements are imposed. The notices in appendix H provide models that creditors may use in giving the notice.❚

►*23(b)(2) Format of notice.*

1. *Failure to format correctly.* The creditor's failure to comply with the format requirements in § 226.23(b)(2) does not by itself constitute failure to deliver the notice of the right to rescind. However, to deliver the notice properly for purposes of § 226.23(a)(3), the creditor must provide the disclosures required under § 226.23(b)(3) clearly and conspicuously, as described in § 226.23(b)(3) and comment 23(b)(3)–1.

2. *Notice must be in writing in a form the consumer may keep.* The rescission notice must be in writing in a form that the consumer may keep. *See* § 226.17(a).

23(b)(3) Required content of notice.◄

❚3. *Content.* The notice must include all of the information outlined in § 226.23(b)(1)(i) through (v). The requirement in § 226.23(b) that the transaction be identified may be met by providing the date of the transaction. The creditor may provide a separate form that the consumer may use to exercise the right of rescission, or that form may be combined with the other rescission disclosures, as illustrated in appendix H. The notice may include additional information related to the required information, such as:

• A description of the property subject to the security interest.

• A statement that joint owners may have the right to rescind and that a rescission by one is effective for all.

• The name and address of an agent of the creditor to receive notice of rescission.]

►1. *Clear and conspicuous standard.* The clear and conspicuous standard generally requires that disclosures be in a reasonably understandable form and readily noticeable to the consumer.

2. *Methods for sending notification of exercise.* In addition to providing a postal address for regular mail in the disclosure

required under § 226.23(b)(3)(v), the creditor, at its option, may describe overnight courier, fax, e-mail, in-person or other methods of communication that the consumer may use to send or deliver written notification to the creditor of exercise of the right of rescission.

3. *Creditor's or its agent's address.* If the creditor designates an agent to receive the consumer's rescission notice, the creditor may include its name along with the agent's name and address in the disclosure required by § 226.23(b)(3)(v).

4. *Calendar date on which the rescission period expires.* i. In some cases, the creditor cannot provide the calendar date on which the three-business-day period for rescission expires, such as when the transaction is conducted through the mail or occurs through an escrow agent and involves two or more borrowers who do not sign the closing documents at the same time. If the creditor cannot provide an accurate calendar date on which the three-business-day rescission period expires, the creditor must provide the calendar date on which it reasonably and in good faith expects the three-business-day period for rescission to expire. For example, assume that a consumer receives all material disclosures on February 15. If the creditor uses an overnight courier service to deliver closing documents and the rescission notice to the consumer on Monday, March 1, the creditor could instruct the consumer to sign the documents no later than Wednesday, March 3, in which case the creditor should provide Saturday, March 6, as the calendar date after which the three-business-day period for rescission expires. In this example, Saturday, March 6, is the calendar date on which the creditor can reasonably expect the rescission period to expire because the creditor expects that the consumer will receive the notice of the right of rescission on Monday, March 1 with the rest of the closing documents and because the creditor can reasonably assume that the consumer will wait until the deadline of Wednesday, March 3, to sign the closing documents and consummate the transaction.

ii. If the creditor provides a date in the notice that gives the consumer a longer period within which to rescind than the actual period for rescission, the notice shall be deemed to comply with the requirement in § 226.23(b)(3)(vi), as long as the creditor permits the consumer to rescind the transaction through the end of the date in the notice. For instance, in the example in comment 23(b)(3)–4.i. above, if the consumer signs the closing documents upon receipt on Monday, March 1, the actual expiration date of the right to rescind would be at the end of Thursday, March 4. The creditor's notice stating that the expiration date is Saturday, March 6 would be deemed compliant with § 226.23(b)(3)(vi), as long as the creditor permits the consumer to rescind through the end of Saturday, March 6.

iii. If the creditor provides a date in the notice that gives the consumer a shorter period within which to rescind than the actual period for rescission, the creditor shall be deemed to comply with the requirement in § 226.23(b)(3)(vi) if the creditor notifies the consumer that the deadline in the first notice of the right of rescission has changed and provides a second notice to the consumer stating that the consumer's right to rescind expires on a calendar date which is three business days from the date the consumer receives the second notice. For instance, in the example in comment 23(b)(3)–4.i. above, if the consumer disregards the creditor's instructions to sign the closing documents no later than Wednesday, March 3, and signs the closing documents on Thursday, March 4, the actual date after which the right of rescission expires would be Monday, March 8. The creditor's notice stating that the expiration date is Saturday, March 6, would not violate § 226.23(b)(3)(vi) if the creditor discloses to the consumer that the expiration date in the first notice (March 6) has changed and provides a corrected notice with an additional three-business-day period to rescind. For example, the creditor could prepare on Monday, March 8 a second notice stating that the expiration date for the right to rescind is the end of Friday, March 12 and include that second notice in a package delivered by overnight courier to the consumer on Tuesday, March 9. The creditor also could include in the package a cover letter stating that the deadline to cancel the transaction has changed, and refer to the "Deadline to Cancel" section in the second notice.

5. *Form for consumer's exercise of right.* Creditors must provide a space for the consumer's name and property address on the form. Creditors are not obligated to complete the lines in the form for the consumer's name and property address, but may wish to do so to ensure that the consumer who uses the form to exercise the right can be readily identified. At its option, a creditor may include the loan number on the form. A creditor may not, however, request or require the consumer to provide the loan number on the form (such as including a space labeled "loan number" for the consumer to complete).

6. *New advance of money with the same creditor under § 226.23(f)(2).* Under § 226.23(f)(2), a consumer may rescind a new transaction with the same creditor only if there is a new advance of money as defined in § 226.23(f)(2)(ii). The new transaction is rescindable only to the extent of the new advance. In such transactions, the creditor must provide the consumer with the information in § 226.23(b)(3)(iv) regarding the previous loan. Model Form H–9 is designed for providing notice of the right of rescission to a consumer obtaining a new advance of money with the same creditor.

23(b)(4) Optional content of notice.

1. *Related information.* Section 226.23(b)(4) lists optional disclosures that are related to the disclosures required by § 226.23(b)(3) that may be added to the notice. In addition, at the creditor's option, other information directly related to the disclosures required by § 226.23(b)(3) may be included in the notice. An explanation of the use of pronouns or other references to the parties to the transaction is directly related information. For example, a creditor might add to the notice a statement that "'You' refers to the customer and 'we' refers to the creditor."

23(b)(5)◄[4.] *Time of providing notice.*

►1. In those cases where § 226.23(b)(5)(i) applies, the◄[The] notice required by § 226.23(b) ►must be given◄[need not be given] before consummation of the transaction. ► If t◄[T]he creditor [may] deliver►s◄ the notice after the transaction is consummated, [but the]►the timing requirement of § 226.23(b)(5)(i) is violated and the right of rescission does not expire until the earlier of three business days after ◄ [rescission period will not begin to run until] the notice is ►properly◄ given ►or upon the occurrence of one of the events listed in § 226.15(a)(3)(ii)(A)◄. For example, if the creditor ►delivers the material disclosures to the consumer in person on Monday, March 1 and the loan is consummated on Thursday, March 4 (after all applicable waiting periods under § 226.19(a)(2) have expired), but the creditor provides the rescission notice on Wednesday, March 24, the right of rescission does not expire until the end of the third business day after Wednesday, March 24, that is, until the end of Saturday, March 27◄[provides the notice on May 15, but disclosures were given and the transaction was consummated on May 10, the 3-business-day rescission period will run from May 15].

►*23(b)(6) Proper form of notice.*

1. A creditor satisfies § 226.23(b)(3) if it provides the appropriate model form in Appendix H, or a substantially similar notice, which is properly completed with the disclosures required by § 226.23(b)(3). For example, a notice would not fulfill the requirement to deliver the notice of the right to rescind if the date on which the three-business-day period for rescission terminates was not properly completed because the date was missing or incorrectly calculated. If the creditor provides a date that is later deemed inaccurate, the notice may be deemed to comply with § 226.23(b)(3) if the creditor follows the guidance in § 226.23(b)(3)(vi) and comment 23(b)(3)–4.◄

23(c) Delay of creditor's performance.

1. *General rule.* Until the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded, the creditor must not, either directly or through a third party:

[•]►A.◄ Disburse loan proceeds to the consumer.

[•]►B.◄ Begin performing services for the consumer.

[•]►C.◄ Deliver materials to the consumer.

2. *Escrow.* The creditor may disburse loan proceeds during the rescission period in a valid escrow arrangement. The creditor may not, however, appoint the consumer as "trustee" or "escrow agent" and distribute funds to the consumer in that capacity during the delay period.

3. *Actions during the delay period.* Section 226.23(c) does not prevent the creditor from taking other steps during the delay, short of beginning actual performance. Unless otherwise prohibited, such as by State law, the creditor may, for example:

[•]►A.◄ Prepare the loan check.

[•]►B.◄ Perfect the security interest.

[•]►C.◄ Prepare to discount or assign the contract to a third party.

[•]►D.◄ Accrue finance charges during the delay period.

4. *Delay beyond rescission period.* ►i.◄ The creditor must wait until it is reasonably satisfied that the consumer has not rescinded ►within the applicable time period◄. For example, the creditor may satisfy itself by doing one of the following:

[•]►A.◄ Waiting a reasonable time after expiration of the rescission period to allow for delivery of a mailed notice.

[•]►B.◄ Obtaining a written statement from the consumer that the right has not been exercised. ►The statement must be signed and dated by the consumer only at the end of the three-day period.◄

►ii.◄ When more than one consumer has the right to rescind, the creditor cannot reasonably rely on the assurance of only one consumer, because other consumers may exercise the right.

23(d) Effects of rescission

23(d)►(1)◄ Effects of rescission ►prior to the creditor disbursing funds◄.

[*Paragraph*] *23(d)(1)►(i) Effect of consumer's notice of rescission◄.*

1. *Termination of security interest.* Any security interest giving rise to the right of rescission becomes void when the consumer [exercises the right of rescission]►provides a notice of rescission to a creditor◄. The security interest is automatically negated regardless of its status and whether or not it was recorded or perfected. Under § 226.23[(d)(2)]►(d)(1)(ii)◄, however, the creditor must take [any action]►whatever steps are◄ necessary to [reflect the fact that]►terminate◄ the security interest [no longer exists].

[*Paragraph*] *23[(d)(2)]►(d)(1)(ii) Creditor's obligations◄.*

1. *Refunds to consumer.* The consumer cannot be required to pay any amount [in the form of money or property] either to the creditor or to a third party as part of the credit transaction. Any amounts [of this nature] already paid by the consumer must be refunded. *Any amount* includes finance charges already accrued, as well as other charges, [such as broker fees, application and commitment fees, or fees for a title search or appraisal,] whether paid to the creditor, paid directly to a third party, or passed on from the creditor to the third party. It is irrelevant that these amounts may not represent profit to the creditor.

2. *Amounts not refundable to consumer.* Creditors need not return any money given by the consumer to a third party outside of the credit transaction, such as costs incurred for a building permit or for a zoning variance. [Similarly, the term *any amount* does not apply to any money or property given by the creditor to the consumer; those amounts must be tendered by the consumer to the creditor under § 226.23(d)(3).]

3. *Reflection of security interest termination.* The creditor must take whatever steps are necessary to [indicate that]►terminate◄ the security interest [is terminated]. Those steps include the cancellation of documents creating the security interest, and the filing of release or termination statements in the public record. [In a transaction involving subcontractors or suppliers that also hold security interests related to the credit transaction, the creditor]►If a mechanic's or materialman's lien is retained by a subcontractor or supplier of a creditor-contractor, the creditor-contractor◄ must ensure that the termination of [their]►that◄ security interest[s] is also reflected. The 20-day period for the creditor's action refers to the time within which the creditor must begin the process. It does not require all necessary steps to have been completed within that time, but the creditor is responsible for [seeing the process through to completion]►ensuring that the process is completed◄.

►4. *Twenty-calendar-day period.* The 20-calendar-day period begins to runs from the date the creditor *receives* the consumer's notice. The creditor is deemed to have received the consumer's notice of rescission if the consumer provides the notice to the creditor or the creditor's agent designated on the notice. Where no designation is provided, the creditor is deemed to have received the notice if the consumer provides it to the servicer. See § 226.23(a)(2)(ii)(A).◄

[*Paragraph 23(d)(3).*

1. *Property exchange.* Once the creditor has fulfilled its obligations under § 226.23(d)(2), the consumer must tender to the creditor any property or money the creditor has already delivered to the consumer. At the consumer's option, property may be tendered at the location of the property. For example, if lumber or fixtures have been delivered to the consumer's home, the consumer may tender them to the creditor by making them available for pick-up at the home, rather than physically returning them to the creditor's premises. Money already given to the consumer *must* be tendered at the creditor's place of business.

2. *Reasonable value.* If returning the property would be extremely burdensome to the consumer, the consumer may offer the creditor its reasonable value rather than returning the property itself. For example, if building materials have already been incorporated into the consumer's dwelling, the consumer may pay their reasonable value.

Paragraph 23(d)(4).

1. *Modifications.* The procedures outlined in § 226.23(d)(2) and (3) may be modified by a court. For example, when a consumer is in bankruptcy proceedings and prohibited from returning anything to the creditor, or when the equities dictate, a modification might be made. The sequence of procedures under § 226.23(d)(2) and (3), or a court's modification of those procedures under § 226.23(d)(4), does not affect a consumer's substantive right to rescind and to have the loan amount adjusted accordingly. Where the consumer's right to rescind is contested by the creditor, a court would normally determine whether the consumer has a right to rescind and determine the amounts owed before establishing the procedures for the parties to tender any money or property.]

►*23(d)(2) Effects of rescission after the creditor disburses funds.*

23(d)(2)(i) Effects of rescission if the parties are not in a court proceeding.

1. *Effect of the process.* The process set forth in § 226.23(d)(2)(i) does not affect the consumer's ability to seek a remedy in court, such as an action to recover damages under section 130 of the act, and/or an action to seek to tender in installments. In addition, a creditor's written statement as described in § 226.23(d)(2)(i)(B), is not an admission by the creditor that the consumer's claim is a valid exercise of the right to rescind.

23(d)(2)(i)(A) Creditor's acknowledgment of receipt.

1. *Twenty-calendar-day period.* The 20-calendar-day period begins to run from the date the creditor *receives* the consumer's notice. The creditor is deemed to have received the consumer's notice of rescission if the consumer provides the notice to the servicer. See comment 23(a)(2)(ii)(B)–1.

23(d)(2)(i)(B) Creditor's written statement.

1. *Written statement regarding tender of money.* If the creditor disbursed money to the consumer, then the creditor's written statement must state the amount of money that the creditor will accept as the consumer's tender. For example, suppose the principal balance owed at the time the creditor received the consumer's notice of rescission was $165,000, the costs paid directly by the consumer at closing were $8,000, and the consumer made interest payments totaling $20,000 from the date of consummation to the date of the creditor's receipt of the consumer's notice of rescission. The creditor's written statement could provide that the acceptable amount of tender is $137,000, or some amount higher or lower than that amount.

2. *Reasonable date.* The creditor must provide the consumer with a reasonable date by which the consumer may tender the money or property described in paragraph (d)(2)(i)(B)(*1*) of this section. For example, it would be reasonable under most circumstances to permit the consumer's tender within 60 days of the creditor mailing or delivering the written statement.

23(d)(2)(i)(C) Consumer's response.

1. *Reasonable value of property.* If returning the property would be extremely burdensome to the consumer, the consumer may offer the creditor its reasonable value rather than returning the property itself. For example, if aluminum siding has already been incorporated into the consumer's dwelling, the consumer may pay its reasonable value.

2. *Location for tender of property.* At the consumer's option, property may be tendered at the location of the property. For example, if aluminum siding or windows have been delivered to the consumer's home, the consumer may tender them to the creditor by making them available for pick-up at the home, rather than physically returning them to the creditor's premises.

23(d)(2)(i)(D) Creditor's security interest.

1. *Reflection of security interest termination.* See comment 23(d)(1)(ii)–3.

23(d)(2)(ii) Effects of rescission in a court proceeding.

1. *Valid right of rescission.* The procedures set forth in § 226.23(d)(2)(ii) assume that the consumer's right to rescind has not expired as provided in § 226.23(a)(3)(ii). Thus, if the consumer provides a notice of rescission more than three years after consummation of the transaction, then the consumer's right to rescind has expired, and these procedures do not apply. See § 226.23(a)(3)(ii)(A).

23(d)(2)(ii)(A) Consumer's obligation.

1. *Tender of money.* If the creditor disbursed money to the consumer, the consumer shall tender to the creditor the principal balance owed at the time the creditor received the consumer's notice of rescission less any amounts the consumer has given to the creditor or a third party in connection with the transaction. For example, suppose the principal balance owed at the time the creditor received the consumer's notice of rescission was $165,000, the costs paid directly by the consumer at closing were $8,000, and the consumer made interest payments totaling $20,000 from the date of consummation to the date the creditor received the consumer's notice of rescission. The amount of the consumer's tender would be $137,000. This amount may be reduced by any amounts for damages, attorney's fees or costs, as the court may determine.

2. *Refunds to consumer.* See comment 23(d)(1)(ii)–1.

3. *Amounts not refundable to consumer.* For purposes of § 226.23(d)(2)(ii)(A), the term *any amount* does not include any money given by the consumer to a third party outside of the credit transaction, such as costs the consumer incurred for a building permit or for a zoning variance. Similarly, the term *any amount* does not apply to any money or property given by the creditor to the consumer.

4. *Condition of consumer's tender.* There may be circumstances where the consumer has no obligation to tender and, therefore, the creditor's obligations would not be conditioned on the consumer's tender. For example, in the case of a new transaction with the same creditor and a new advance of money, the new transaction is rescindable only to the extent of the new advance. See § 226.23(f)(2)(ii). Suppose the amount of the new advance was $3,000, but the costs paid directly by the consumer at closing were $5,000. The creditor would need to provide $2,000 to the consumer. In that case, within 20 calendar days after the creditor's receipt of a consumer's notice of rescission, the creditor would refund the $2,000 and terminate the security interest.

5. *Reasonable value of property.* See comment 23(d)(2)(i)(C)–1.

6. *Location for tender of property.* See comment 23(d)(2)(i)(C)–2.

23(d)(2)(ii)(B) Creditor's obligation.

1. *Reflection of security interest termination.* See comment 23(d)(1)(ii)–3.

23(d)(2)(ii)(C) Judicial modification.

1. *Determination of the consumer's right to rescind.* The sequence of procedures under §§ 226.23(d)(2)(ii)(A) and (B), or a court's modification of those procedures under § 226.23(d)(2)(ii)(C), does not affect a consumer's substantive right to rescind and to have the loan amount adjusted accordingly. Where the consumer's right to rescind is contested by the creditor, a court would normally determine first whether the consumer's right to rescind has expired, then the amounts owed by the consumer and the creditor, and then the procedures for the consumer to tender any money or property.

2. *Judicial modification of procedures.* The procedures outlined in §§ 226.23(d)(2)(ii)(A) and (B) may be modified by a court. For example, when a consumer is in bankruptcy proceedings and prohibited from returning anything to the creditor, or when the equities dictate, a modification might be made. A court may modify the consumer's form or manner of tender, such as by ordering payment in installments or by approving the parties' agreement to an alternative form of tender.◀

23(e) *Consumer's waiver of right to rescind.*

[1. *Need for waiver.* To waive the right to rescind, the consumer must have a *bona fide* personal financial emergency that must be met before the end of the rescission period. The existence of the consumer's waiver will not, of itself, automatically insulate the creditor from liability for failing to provide the right of rescission.]

[2.]▶1.◀ *Procedure.* [To waive or modify the right to rescind, the consumer must give a written statement that specifically waives or modifies the right, and also includes a brief description of the emergency. Each consumer entitled to rescind must sign the waiver statement. In a transaction involving multiple consumers, such as a husband and wife using their home as collateral, the waiver must bear the signatures of both spouses.]▶A consumer may modify or waive the right to rescind only after the creditor delivers the notice required by § 226.23(b) and the disclosures required by §§ 226.32(c) and 226.38, as applicable. After delivery of the required notice and disclosures, the consumer may waive or modify the right to rescind by giving the creditor a dated, written statement that specifically waives or modifies the right and describes the *bona fide* personal financial emergency. A waiver is effective only if each consumer entitled to rescind signs a waiver statement. Where there are multiple consumers entitled to rescind, the consumers may, but need not, sign the same waiver statement. See § 226.2(a)(11) to determine which natural persons are consumers with the right to rescind.

2. *Bona fide personal financial emergency.* To modify or waive the right to rescind, there must be a *bona fide* personal financial emergency that requires disbursement of loan proceeds before the end of the rescission period. Whether there is a *bona fide* personal financial emergency is determined by the facts surrounding individual circumstances. A *bona fide* personal financial emergency typically, but not always, will involve imminent loss of or harm to a dwelling or harm to the health or safety of a natural person. A waiver is not effective if the consumer's statement is inconsistent with facts known to the creditor. The following examples describe circumstances that are and are not a *bona fide* personal financial emergency.

i. *Examples—bona fide personal financial emergency.* Examples of a *bona fide* personal financial emergency include the following:

A. The imminent sale of the consumer's home at foreclosure, where the foreclosure sale will proceed unless the loan proceeds are made available to the consumer during the rescission period.

B. The need for loan proceeds to fund immediate repairs to ensure that a dwelling is habitable, such as structural repairs needed due to storm damage, where loan proceeds are needed during the rescission period to pay for the repairs.

C. The imminent need for health care services, such as in-home nursing care for a patient recently discharged from the hospital, where loan proceeds are needed during the rescission period to pay for the services.

ii. *Examples—not a bona fide personal financial emergency.* Examples of circumstances that are not a *bona fide* personal financial emergency include the following:

A. The consumer's desire to purchase goods or services not needed on an emergency basis, even though the price may increase if purchased after the rescission period.

B. The consumer's desire to invest immediately in a financial product, such as purchasing securities.

iii. *Consumer's waiver statement inconsistent with facts.* The conditions for a waiver are not met where the consumer's waiver statement is inconsistent with facts known to the creditor. For example, the conditions for a waiver are not met where the consumer's waiver statement states that loan proceeds are needed during the rescission period to abate flooding in a consumer's basement, but the creditor is aware that there is no flooding.◀

23(f) Exempt transactions.

▶1. *Converting open-end to closed-end credit.* Under certain State laws, consummation of a closed-end credit transaction may occur at the time a consumer enters into the initial open-end credit agreement that is subject to a closed-end conversion feature. As provided in the commentary to § 226.17(b), closed-end credit disclosures may be delayed under these circumstances until the conversion of the open-end account to a closed-end transaction. In accounts secured by the consumer's principal dwelling, no new right of rescission arises at the time of conversion. Rescission rights under § 226.15 are unaffected.

Paragraph 23(f)(1).◀

1. *Residential mortgage* [*transaction*]▶*transactions exempt*◀. Any transaction to construct or acquire a principal dwelling, whether considered real or personal property, is exempt. (See the commentary to § 226.23(a).) For example, a credit transaction to acquire a mobile home or houseboat to be used as the consumer's principal dwelling would not be rescindable.

2. *Lien status.* The lien status of the mortgage is irrelevant for purposes of the exemption in § 226.23(f)(1); the fact that a loan has junior lien status does not by itself preclude application of this exemption. For example, a home buyer may assume the existing first mortgage and create a second mortgage to finance the balance of the purchase price. Such a transaction would not be rescindable.

3. *Combined-purpose transaction.* A loan to acquire a principal dwelling and make improvements to that dwelling is exempt if treated as one transaction. If, on the other hand, the loan for the acquisition of the principal dwelling and the subsequent

advances for improvements are treated as more than one transaction, then only the transaction that finances the acquisition of that dwelling is exempt.

►*Paragraph 23(f)(2).*◄

[4.]►1.◄ *New advances.* [The exemption in § 226.23(f)(2) applies only to refinancings (including consolidations) by the original creditor. The original creditor is the creditor to whom the written agreement was initially made payable. In a merger, consolidation or acquisition, the successor institution is considered the original creditor for purposes of the exemption in § 226.23(f)(2). If the refinancing involves a new advance of money, the amount of the new advance is rescindable.] In determining whether there is a new advance, a creditor may rely on 【the amount financed, refinancing costs,】►the loan amount, the new transaction costs,◄ and other figures stated in the final Truth in Lending disclosures provided to the consumer and is not required to use, for example, more precise information that may only become available when the loan is closed. ►*See* § 226.38(a)(1) regarding the meaning of the term *loan amount.*◄

►2. *Costs of the new transaction.*◄ For purposes of the right of rescission, a new advance does not include amounts attributed solely to [the]►any *bona fide* and reasonable◄ costs of the [refinancing]►new transaction◄. [These amounts would include § 226.4(c)(7) charges (such as attorneys fees and title examination and insurance fees, if bona fide and reasonable in amount), as well as insurance premiums and other charges that are not finance charges. (Finance charges on the new transaction—points, for example—would not be considered in determining whether there is a new advance of money in a refinancing since finance charges are not part of the amount financed.)] To illustrate, if the sum of the outstanding principal balance plus the earned unpaid finance charge is $50,000 and the new [amount financed]►loan amount◄ is $51,000, then the [refinancing]►new transaction◄ would be exempt if the extra $1,000 is attributed solely to ►*bona fide* and reasonable◄ costs financed in connection with the ►new transaction◄【refinancing that are not finance charges】.

►3. *Refund of costs.* If◄[Of course, if] new advances of money are made (for example, to pay for home improvements) and the consumer exercises the right of rescission, the consumer must be placed in the same position as he or she was in prior to entering into the new [credit] transaction. Thus, all amounts of money (which would include all the costs of the 【refinancing】►new transaction◄) already paid by the consumer to the creditor or to a third party as part of the 【refinancing】►new transaction◄ would have to be refunded to the consumer. (See the commentary to § 226.23(d)(2) for a discussion of refunds to consumers.)

►4. *Escrows.* Amounts that are financed to fund an existing or newly-established escrow account do not constitute a new advance. For purposes of this paragraph, the term *escrow account* has the same meaning as in 24 CFR 3500.17(b).◄

►5. *Model rescission notice.*◄ A model rescission notice applicable to [transactions] ►a new advance of money with the same creditor◄[involving new advances] appears [in]►as model form H–9◄ in appendix H. 【The】►Otherwise, the◄ general rescission notice (model form H–8) is the appropriate form for use by creditors 【not considered original creditors in refinancing transactions】.

►*Paragraph 23(f)(3).*◄

[5.]►1.◄ *State creditors.* Cities and other political subdivisions of states acting as creditors are not exempted from this section.

►*Paragraph 23(f)(4).*◄

【6.】►1.◄ *Multiple advances.* Just as new disclosures need not be made for subsequent advances when treated as one transaction, no new rescission rights arise so long as the appropriate notice and disclosures are given at the outset of the transaction. For example, the creditor extends credit for home improvements secured by the consumer's principal dwelling, with advances made as repairs progress. As permitted by § 226.17(c)(6), the creditor makes a single set of disclosures at the beginning of the construction period, rather than separate disclosures for each advance. The right of rescission does not arise with each advance. However, if the advances are treated as separate transactions, the right of rescission applies to each advance.

【7.】►2.◄ *Spreader clauses.* When the creditor holds a mortgage or deed of trust on the consumer's principal dwelling and that mortgage or deed of trust contains a "spreader clause," subsequent loans made are separate transactions and are subject to the right of rescission. Those loans are rescindable unless the creditor effectively waives its security interest under the spreader clause with respect to the subsequent transactions.

【8. *Converting open-end to closed-end credit.* Under certain State laws, consummation of a closed-end credit transaction may occur at the time a consumer enters into the initial open-end credit agreement. As provided in the commentary to § 226.17(b), closed-end credit disclosures may be delayed under these circumstances until the conversion of the open-end account to a closed-end transaction. In accounts secured by the consumer's principal dwelling, no new right of rescission arises at the time of conversion. Rescission rights under § 226.15 are unaffected.】

【*23(g) Tolerances for accuracy.*

23(g)(2) One percent tolerance.

1. *New advance.* The phrase "new advance" has the same meaning as in comment 23(f)–4.

23(h)】 ►*23(g)*◄*Special rules for foreclosures.*

1. *Rescission.* Section 【226.23(h)】►226.23(g)◄ applies only to transactions that are subject to rescission under § 226.23(a)(1).

Paragraph 【*23(h)(1)(i)*】►*23(g)(1)*◄.

1. *Mortgage broker fees.* A consumer may rescind a loan in foreclosure if a mortgage broker fee that should have been included in the 【finance charge】►interest and settlement charges◄ was omitted, without regard to the dollar amount involved. If the amount of the mortgage broker fee is included but misstated the rule in 【§ 226.23(h)(2)】►§ 226.23(a)(5)(ii)(C)◄ applies.

【*23(h)(2) Tolerance for disclosures.*

1. *General.* This section is based on the accuracy of the total finance charge rather than its component charges.】

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Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.31—General Rules

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31(c) Timing of disclosure.

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31(c)(1) Disclosures for certain closed-end home mortgages

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【*Paragraph*】*31(c)(1)(iii) Consumer's waiver of waiting period before consummation.*

1. 【*Modification or waiver.*】►*Procedure.*◄ A consumer may modify or waive the right to the three-day waiting period only after receiving the disclosures required by § 226.32►.◄ 【and only if the circumstances meet the criteria for establishing a *bona fide* personal financial emergency under § 226.23(e). Whether these criteria are met is determined by the facts surrounding individual situations. The imminent sale of the consumer's home at foreclosure during the three-day period is one example of a *bona fide* personal financial emergency. Each consumer entitled to the three-day waiting period must sign the handwritten statement for the waiver to be effective.】►After delivery of the required disclosures, the consumer may waive or modify the three-day waiting period by giving the creditor a dated, written statement that specifically waives or modifies the right and describes the *bona fide* personal financial emergency. A waiver is effective only if each consumer primarily liable on the obligation signs a waiver statement. Where there are multiple consumers entitled to rescind, the consumers may, but need not, sign the same waiver statement.◄

►2. *Bona fide personal financial emergency.* To modify or waive a waiting period, there must be a *bona fide* personal financial emergency that requires disbursement of loan proceeds before the end of the waiting period. Whether there is a *bona fide* personal financial emergency is determined by the facts surrounding individual circumstances. A *bona fide* personal financial emergency typically, but not always, will involve imminent loss of or harm to a dwelling or harm to the health or safety of a natural person. A waiver is not effective if the consumer's statement is inconsistent with facts known to the creditor. To determine whether circumstances are or are not a *bona fide* personal financial emergency under § 226.31(c)(1)(iii), creditors may rely on the examples and other commentary provided in comment 23(e)–2.◄

* * * * *

[*31(c)(2) Disclosures for reverse mortgages.*

1. *Business days.* For purposes of providing reverse mortgage disclosures, "business day" has the same meaning as in comment 31(c)(1)–1—all calendar days

except Sundays and the Federal legal holidays listed in 5 U.S.C. 6103(a). This means if disclosures are provided on a Friday, consummation could occur any time on Tuesday, the third business day following receipt of the disclosures.

2. *Open-end plans.* Disclosures for open-end reverse mortgages must be provided at least three business days before the first transaction under the plan (see § 226.5(b)(1)).]

31(d) Basis of disclosures and use of estimates.

1. *Redisclosure.* Section 226.31(d) allows the use of estimates when information necessary for an accurate disclosure is unknown to the creditor, provided that the disclosure is clearly identified as an estimate. For purposes of Subpart E, the rule in § 226.31(c)(1)(i) requiring new disclosures when the creditor changes terms also applies to disclosures labeled as estimates.

►2. *Reverse mortgages subject to § 226.19.* For reverse mortgages subject to § 226.19, the disclosures required by § 226.19(a)(2) may not be estimated disclosures.◄

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Section 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage.

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Paragraph 32(a)(1)(ii).

1. *Total loan amount.* For purposes of the "points and fees" test, the total loan amount is calculated by taking the amount financed, as determined according to § 226.18(b), and deducting any cost listed in § 226.32(b)(1)(iii) and § 226.32(b)(1)(iv) that is both included as points and fees under § 226.32(b)(1) and financed by the creditor. ►In calculating the total loan amount, however, the creditor determines a transaction's prepaid finance charge and amount financed without regard to § 226.4(g), consistent with § 226.32(b)(1)(i)(B).◄ Some examples follow, each using a $10,000 amount borrowed, a $300 appraisal fee, and $400 in points. A $500 premium for optional credit life insurance is used in one example. ►In the following examples, "prepaid finance charge" and "amount financed" refer to those amounts as determined without regard to § 226.4(g). Thus, those amounts reflect the exclusions found in §§ 226.4(a)(2) and 226.4(c)–(e) for purposes of determining the total loan amount, even though § 226.4(g) provides that many of those exclusions do not apply for purposes of determining the finance charge.◄

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►*Paragraph 32(a)(2)(ii).*

1. *Nonrecourse reverse mortgage.* A nonrecourse reverse mortgage limits the homeowner's liability under the contract to the proceeds of the sale of the home (or any lesser amount specified in the contract). If a closed-end reverse mortgage allows recourse against the consumer, and the annual percentage rate or the points and fees exceed those specified under § 226.32(a)(1), the transaction is subject to all the requirements of § 226.32, including the limitations concerning balloon payments and negative amortization.◄

32(b) Definitions.

►*Paragraph 32(b)(1).*◄

Paragraph 32(b)(1)(i).

1. *General.* Section 226.32(b)(1)(i) includes in the total "points and fees" items ►included in the finance charge pursuant to § 226.4, except interest and the time-price differential. In addition, for purposes of § 226.32(b)(1)(i), § 226.4(g) does not apply. Section 226.4(g) contains special rules governing which other provisions of § 226.4 apply to the determination of the finance charge for transactions secured by real property or a dwelling. Consequently, all closed-end transactions that are secured by a consumer's principal dwelling are subject to the special rules in § 226.4(g). Under § 226.32(b)(1)(i)(B), however, those special rules are ignored in determining a transaction's "points and fees." Thus, the exclusions for certain charges in §§ 226.4(a)(2) and 226.4(c)–(e) are observed for purposes of determining a mortgage transaction's "points and fees," even though the same exclusions do not apply for purposes of determining the transaction's finance charge. For example, fees actually paid to public officials for perfecting a security interest, if itemized and disclosed, may be excluded from the finance charge for non-mortgage transactions under § 226.4(e), but § 226.4(g) includes such fees in the finance charge for transactions secured by real property or a dwelling. Notwithstanding their inclusion in the finance charge for such transactions, however, § 226.32(b)(1)(i) does not include such fees in "points and fees." Certain fees that are not included in "points and fees" pursuant to § 226.32(b)(1)(i), however, nevertheless may be included in "points and fees" under § 226.32(b)(1)(ii) or (iii).◄ [defined as finance charges under §§ 226.4(a) and 226.(4)(b). Items excluded from the finance charge under other provisions of § 226.4 are not included in the total "points and fees" under paragraph 32(b)(1)(i), but may be included in "points and fees" under paragraphs 32(b)(1)(ii) and 32(b)(1)(iii).] Interest, including per-diem interest, is excluded from "points and fees" under § 226.32(b)(1).

Paragraph 32(b)(1)(ii).

1. *Mortgage broker fees.* In determining "points and fees" for purposes of ►§ 226.32(a)(1)(ii),◄ [this section,] compensation paid by a consumer to a mortgage broker (directly or through the creditor for delivery to the broker) is included in the calculation [whether or not the amount is disclosed as a finance charge]. Mortgage broker fees that are not paid by the consumer are not included. ►*See* comment 4(a)(3)–3.◄ Mortgage broker fees already included in the calculation as finance charges under § 226.32(b)(1)(i) need not be counted again under § 226.32(b)(1)(ii).

►*Paragraph 32(b)(1)(iii).*

1.◄ [2.]*Example.* Section 226.32(b)(1)(iii) defines "points and fees" to include all items listed in § 226.4(c)(7), other than amounts held for the future payment of taxes. An item listed in § 226.4(c)(7) may be excluded from the "points and fees" calculation, however, if the charge is reasonable, the creditor receives no direct or indirect compensation from the charge, and the charge is not paid to an affiliate of the creditor. For example, a reasonable fee paid by the consumer to an independent, third-party appraiser may be excluded from the "points and fees" calculation (assuming no compensation is paid to the creditor). A fee paid by the consumer for an appraisal performed by the creditor must be included in the calculation, [even though the fee may be excluded from the finance charge if it is bona fide and reasonable in amount.] ►however, because the creditor is compensated for the appraisal.◄

Paragraph 32(b)(1)(iv).

1. *Premium amount.* In determining "points and fees" for purposes of ►§ 226.32(a)(1)(ii)◄ [this section,] premiums paid at or before closing for credit insurance are included whether they are paid in cash or financed, and whether the amount represents the entire premium for the coverage or an initial payment.

* * * * *

Section 226.33—Requirements for Reverse Mortgages

33(a) Definition.

[1. *Nonrecourse transaction.* A nonrecourse reverse mortgage transaction limits the homeowner's liability to the proceeds of the sale of the home (or any lesser amount specified in the credit obligation). If a transaction structured as a closed-end reverse mortgage transaction allows recourse against the consumer, and the annual percentage rate or the points and fees exceed those specified under § 226.32(a)(1), the transaction is subject to all the requirements of § 226.32, including the limitations concerning balloon payments and negative amortization.]

Paragraph 33(a)(2).

1. *Default.* Default is not defined by the statute or regulation, but rather by the legal obligation between the parties and state or other law.

2. *Definite term or maturity date.* To meet the definition of a reverse mortgage transaction, a creditor cannot require any principal, interest, or shared appreciation or equity to be due and payable (other than in the case of default) until after the consumer's death, transfer of the dwelling, or the consumer ceases to occupy the dwelling as a principal dwelling. Some State laws require legal obligations secured by a mortgage to specify a definite maturity date or term of repayment in the instrument. An obligation may state a definite maturity date or term of repayment and still meet the definition of a reverse mortgage [transaction] if the maturity date or term of repayment used would not operate to cause maturity prior to the occurrence of any of the maturity events recognized in the regulation. For example, some reverse mortgage programs specify that the final maturity date is the borrower's 150th birthday; other programs include a shorter term but provide that the term is automatically extended for consecutive periods if none of the other maturity events has yet occurred. These programs would be permissible.

►*33(b) Reverse mortgage document provided on or with the application.*

33(b)(1) In general.

1. *Mail and telephone applications.* If an application is sent through the mail, the

document required by § 226.33(b) must accompany the application. If an application is taken over the telephone, the document must be delivered or mailed not later than consummation or account opening or three business days following receipt of a consumer's application by the creditor, whichever is earlier. If an application is mailed to the consumer following a telephone request, however, the document must be sent along with the application.

2. *General purpose applications.* The document required by § 226.33(b) need not be provided when a general purpose application is given to a consumer unless (1) the application or materials accompanying it indicate that it can be used to apply for a reverse mortgage or (2) the application is provided in response to a consumer's specific inquiry about a reverse mortgage. On the other hand, if a general purpose application is provided in response to a consumer's specific inquiry only about credit other than a reverse mortgage, the document need not be provided even if the application indicates it can be used for a reverse mortgage, unless it is accompanied by promotional information about reverse mortgages.

3. *Publicly-available applications.* Some creditors make applications for reverse mortgages, such as take-ones, available without the need for a consumer to request them. These applications must be accompanied by the document required by § 226.33(b), such as by attaching the document to the application form.

4. *Response cards.* A creditor may solicit consumers for its reverse mortgage product by mailing a response card which the consumer returns to the creditor to indicate interest in the product. If the only action taken by the creditor upon receipt of the response card is to send the consumer an application form or to telephone the consumer to discuss the reverse mortgage product, the creditor need not send the document required by § 226.33(b) with the response card. *See* comment 33(b)(1)–1 discussing mail and telephone applications.

5. *Denial or withdrawal of application.* Section 226.33(b)(2) provides that for telephone applications and applications received through an intermediary agent or broker, creditors must deliver or mail the document required by § 226.33(b)(1) to the consumer not later than consummation or account opening, or three business days following receipt of a consumer's application by the creditor, whichever is earlier. If the creditor determines within that three-day period that an application will not be approved, the creditor need not provide the document. Similarly, if the consumer withdraws the application within this three-day period, the creditor need not provide the document.

6. *Prominent location.*

i. *When document not given in electronic form.* The document required by § 226.33(b)(1) must be prominently located on or with the application. The document is deemed to be prominently located, for example, if the document is on the same page as an application. If the document appears elsewhere, it is deemed to be prominently located if the application contains a clear and conspicuous reference to the location of the document and indicates that the document provides information about reverse mortgages.

ii. *Form of electronic document provided on or with electronic applications.* Generally, creditors must provide the document required by § 226.33(b)(1) in a prominent location on or with a blank application that is made available to the consumer in electronic form, such as on a creditor's Internet Web site. (*See* comment 33(b)(2)–1.) Creditors have flexibility in satisfying this requirement. Whatever method is used to satisfy the disclosure requirement, a creditor need not confirm that the consumer has read the document. Methods creditors could use to satisfy the requirement include, but are not limited to, the following examples:

A. The document could automatically appear on the screen when the application appears;

B. The document could be located on the same Web page as the application (whether or not they appear on the initial screen), if the application contains a clear and conspicuous reference to the location of the document and indicates the document provides information about reverse mortgages.

C. Creditors could provide a link to the electronic document on or with the application as long as consumers cannot bypass the document before submitting the application. The link would take the consumer to the document, but the consumer need not be required to scroll completely through the document; or

D. The document could be located on the same Web page as the application without necessarily appearing on the initial screen, immediately preceding the button that the consumer will click to submit the application.

33(b)(2) Application made by telephone or through an intermediary.

1. *Intermediary agent or broker.* In determining whether an application involves an intermediary agent or broker as discussed in § 226.33(b)(2), creditors should consult the provisions in comment 19(d)(3)–3.

33(b)(3) Electronic disclosures.

1. *When electronic disclosure must be given.* Whether the document required by § 226.33(b)(1) must be in electronic form depends upon the following:

i. If a consumer accesses a reverse mortgage application electronically (other than as described under ii. below), such as online at a home computer, the creditor must provide the disclosure required by § 226.33(b)(1) in electronic form (such as with the application form on its Web site) in order to meet the requirement to provide the disclosure in a timely manner on or with the application. If the creditor instead mailed a paper disclosure to the consumer, this requirement would not be met.

ii. In contrast, if a consumer is physically present in the creditor's office, and accesses a reverse mortgage application electronically, such as via a terminal or kiosk (or if the consumer uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the creditor to provide applications to consumers), the creditor may provide the disclosure in either electronic or paper form, provided the creditor complies with the timing, delivery, and retainability requirements of the regulation.

33(b)(4) Duties of third parties.

1. *Duties of third parties.* The duties under § 226.33(b)(4) are those of the third party; the creditor is not responsible for ensuring that a third party complies with those obligations.

2. *Effect of third party delivery of document required by § 226.33(b)(1).* If a creditor determines that a third party has provided a consumer with the document required by § 226.33(b)(1), the creditor need not give the consumer a second copy of the document.

3. *Telephone applications taken by third party.* For telephone applications taken by a third party, the third party is not required to provide the document required by § 226.33(b)(1). The document required by § 226.33(b)(1) must be provided by the creditor not later than three business days before account opening or three business days following receipt of the consumer's application by the creditor, whichever is earlier, along with the disclosures required by § 226.33(d)(1).◄

33(c) ► *Content of disclosures for reverse mortgages*◄ 【*Projected total cost of credit*】.

►1. *Disclosures given as applicable.* The disclosures required under this section need be made only as applicable. Thus, for example, if there are no transactions requirements for a reverse mortgage, reference to them need not be made.◄

【*33(c)(1) Costs to consumer.*】

►*33(c)(2) Identification information.*

1. *Identification of creditor.* The creditor must be identified. Use of the creditor's name is sufficient, but the creditor may also include an address and/or telephone number. In transactions with multiple creditors, any one of them may make the disclosures; the one doing so must be identified.

2. *Multiple loan originators.* In transactions with multiple loan originators, each loan originator's unique identifier must be disclosed. For example, in a transaction where a mortgage broker meets the definition of a loan originator under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Section 1503(3), 12 U.S.C. 5102(3), the identifiers for the broker and for its employee originator meeting that definition must be disclosed.

33(c)(5) Payment of loan funds.

1. *Use of the term "line of credit."* If the reverse mortgage allows the consumer to make discretionary cash withdrawals, the disclosure must use the term "line of credit" regardless of whether the reverse mortgage is open-end or closed-end credit.

2. *Disclosures where consumer has not yet elected the type of payments.*

i. If the creditor provides the consumer with more than one of the payment options described in § 226.33(c)(5)(i) and the consumer has not selected the type of payment at the time the disclosure is provided, the creditor must disclose the consumer's options in the manner described in § 226.33(c)(5)(ii). If the creditor offers the consumer the option to receive funds in the form of discretionary cash advances, the creditor must disclose the total dollar amount of the line of credit the consumer could receive. The creditor must also describe any other types of payments the consumer may receive but must not disclose any dollar amounts with those descriptions.

ii. If the creditor does not offer the consumer the option to receive discretionary cash advances, the creditor must disclose the total dollar amount the consumer could receive in an initial advance and describe any other types of payments that the consumer may receive without using dollar amounts.

iii. If the creditor offers consumers only one type of payment, the creditor need only disclose that payment type.

33(c)(6) Annual percentage rate.

33(c)(6)(i) Open-end annual percentage rate.

1. *Rates disclosed.* The only rates that may be disclosed in the table required by § 226.33(d)(4) are annual percentage rates determined under § 226.14(b). Periodic rates must not be disclosed in the table.

2. *Rate changes set forth in initial agreement.* This paragraph requires disclosure of the rate changes set forth in the initial agreement, as discussed in § 226.5b(f)(3)(i). For example, this paragraph requires disclosure of preferred-rate provisions, where the rate will increase upon the occurrence of some event, such as the borrower-employee leaving the creditor's employ or the consumer closing an existing deposit account with the creditor. The creditor must disclose the preferred rate that applies to the plan, and the rate that would apply if the event occurs, such as the borrower-employee leaving the creditor's employ or the consumer closing an existing deposit account with the creditor. If the preferred rate and the rate that would apply if the event occurs are variable rates, the creditor must disclose those rates based on the applicable index or formula, and disclose other information required by § 226.33(c)(6)(i)(A).

33(c)(6)(i)(A) Disclosures for variable-rate plans.

1. *Variable-rate accounts—definition.* For purposes of § 226.33(c)(6)(i)(A), a variable-rate account exists when rate changes are part of the plan and are tied to an index or formula. (See the commentary to § 226.6(a)(4)(ii)–1 for examples of variable-rate plans.)

2. *Variable-rate accounts—fact that the rate varies and how the rate will be determined.* In describing how the applicable rate will be determined, the creditor must identify in the table described in § 226.33(d)(4) the type of index used and the amount of any margin. In describing the index, a creditor may not include in the table details about the index. For example, if a creditor uses a prime rate, the creditor must disclose the rate as a "prime rate" and may not disclose in the table other details about the prime rate, such as the fact that it is the highest prime rate published in the Wall Street Journal two business days before the closing date of the statement for each billing period. A creditor may not disclose in the table the current value of the index (such as that the prime rate is currently 7.5 percent). See Samples K–4, and K–5 for guidance on how to disclose the fact that the applicable rate varies and how it is determined.

3. *Limitations on increases in rates.* The creditor must disclose in the table required by § 226.33(d) any limitations on increases in the annual percentage rate, including the minimum and maximum annual percentage rate that may be imposed. A creditor must disclose any rate limitations that occur, for example, every two years, annually or less than an annual basis. If the creditor bases its rate limitation on 12 monthly billing cycles, such a limitation must be treated as an annual cap. Rate limitations imposed on more or less than an annual basis must be stated in terms of a specific amount of time. For example, if the creditor imposes rate limitations on only a semiannual basis, this must be expressed as a rate limitation for a six-month time period. If the creditor does not impose annual or other periodic limitations on rate increases, the fact must be stated in the table described in § 226.33(d).

5. *Maximum limitations on increases in rates.* The maximum annual percentage rate that may be imposed over the term of the plan must be provided in the table described in § 226.33(d). If separate overall limitations apply to rate increases resulting from events such as leaving the creditor's employ, those limitations also must be stated. Limitations do not include legal limits in the nature of usury or rate ceilings under state or Federal statutes or regulations.

6. *Sample forms.* Samples K–4, and K–5 provide illustrative guidance on the variable-rate rules.

33(c)(6)(i)(B) Introductory initial rate.

1. *Preferred rates.* If a creditor offers a preferred rate that will increase a specified amount upon the occurrence of a specified event other than the expiration of a specific time period, such as the borrower-employee leaving the creditor's employ, the preferred rate is not an introductory rate under § 226.33(c)(6)(i)(B), but must be disclosed in accordance with § 226.33(c)(6)(i). See comment 33(c)(6)(i)–2.

2. *Immediate proximity.* i. *In general.* If the term "introductory" is in the same phrase as the introductory rate, it will be deemed to be in immediate proximity of the listing. For example, a creditor that uses the phrase "introductory APR X percent" has used the word "introductory" within the same phrase as the rate.

ii. *More than one introductory rate.* If more than one introductory rate may apply to a particular balance in succeeding periods, the term "introductory" need only be used to describe the first introductory rate. For example, if a creditor offers an introductory rate of 8.99% on the plan for six months, and an introductory rate of 10.99% for the following six months, the term "introductory" need only be used to describe the 8.99% rate.

3. *Rate that applies after introductory rate expires.* If the initial rate is an introductory rate, the creditor must disclose the introductory rate, how long the introductory rate will remain in effect, and the rate that would otherwise apply to the plan. Where the rate that would otherwise apply is fixed, the creditor must disclose the rate that will apply after the introductory rate expires. Where the rate that would otherwise apply is variable, the creditor must disclose the rate based on the applicable index or formula, and disclose the other variable-rate disclosures required under § 226.33(c)(6)(i)(A).

33(c)(6)(ii) Closed-end annual percentage rate.

1. *Disclosure required.* The creditor must disclose the cost of the credit as an annual rate, expressed as a percentage and using the term "annual percentage rate," plus a brief descriptive phrase as required under § 226.33(c)(6)(ii). Under § 226.33(d)(4)(vi)(C), the annual rate, expressed as a percentage, must be more conspicuous than the other required disclosures and in at least 16 point font.

33(c)(6)(ii)(B) Rate type.

1. *Rate type.* The rate type to be disclosed corresponds to the loan type required to be disclosed for closed-end credit secured by a dwelling under § 226.38(a)(3). Creditors may follow the commentary to § 226.38(a)(3) in determining the rate type of the reverse mortgage.

33(c)(6)(ii)(C) Rate calculation and rate change limits.

1. *Calculation.* If the interest rate will be calculated based on an index, an identification of the index to which the rate is tied, the amount of any margin that will be added to the index, and any conditions or events on which the increase is contingent must be disclosed. When no specific index is used, the factors used to determine any rate increase must be disclosed. When the increase in the rate is discretionary, the fact that any increase is within the creditor's discretion must be disclosed. When the index is internally defined (for example, by that creditor's prime rate), the creditor may comply with this requirement by providing either a brief description of that index or a statement that any increase is in the discretion of the creditor.

2. *Limitations on interest rate increases.* Limitations include any maximum imposed on the amount of an increase in the rate at any time, as well as any maximum on the total increase over the loan's term to maturity.

33(c)(7) Fees and transaction requirements.

33(c)(7)(i) Fees imposed by creditor and third parties to consummate the transaction or open the plan.

1. *Applicability.* Section 226.33(c)(7)(i) applies only to one-time fees imposed by the creditor or third parties to consummate the transaction or open the plan. The fees include items such as application fees, points, appraisal or other property valuation fees, credit report fees, government agency fees, and attorneys' fees. Monthly fees or other periodic fees that may be imposed for the availability of the reverse mortgage would not be disclosed under § 226.33(c)(7)(i), but must be disclosed under § 226.33(c)(7)(ii). A creditor must not state the amount of any property insurance premiums in the table, even if property insurance is required by the creditor.

2. *Manner of describing itemized fees.* i. Section 226.33(c)(7)(i)(B) provides that if the dollar amount of a one-time account opening fee is not known at the time the

open-end early disclosures under § 226.33(d)(1) are delivered or mailed, a creditor must provide a range for such fee. If a range is shown, the highest and lowest amounts of the fee in that range must be the highest and lowest amounts of the fee that may be imposed.

ii. For the open-end account-opening disclosures required by § 226.33(d)(2), a creditor must disclose in the reverse mortgage account-opening table the total of all one-time fees imposed by the creditor and third parties to open the plan, and may not disclose the highest amount of possible fees as allowed under § 226.33(c)(7)(i)(A) for the disclosure table required under § 226.33(d)(1). In addition, a creditor must disclose in the account-opening table an itemization of all one-time fees imposed by the creditor and third parties to open the plan, and may not disclose a range for those fees, as otherwise allowed under § 226.33(c)(7)(i)(B) for the disclosure table required under § 226.33(d)(1).

3. *Fees not required to be disclosed.* Fees that are not imposed to consummate the transaction or open the plan, such as fees for researching an account, photocopying, exceeding the credit limit, or closing out an account, do not have to be disclosed under this section. For open-end reverse mortgages property valuation fees imposed to investigate whether a condition permitting a freeze continues to exist—as discussed in § 226.5b(g)(2)(iv) and accompanying commentary—are not required to be disclosed under this section.

4. *Rebates of fees.* If one-time fees for consummation or account opening are imposed they must be disclosed, regardless of whether such costs may be rebated later (for example, rebated to the extent of any interest paid during the first year of the plan).

5. *Disclosure of itemized list of fees to open a plan.* A creditor will be deemed to provide the itemization of the consummation or account-opening fees clearly and conspicuously if the creditor provides this information in a format as shown in Samples K–3, K–4 and K–5.

33(c)(7)(ii) Fees imposed by the creditor for availability of the reverse mortgage.

1. *Fee to obtain access devices.* The fees referred to in § 226.33(c)(7)(ii) include fees to obtain access devices, such as fees to obtain checks or credit cards to access the reverse mortgage. For example, a fee to obtain checks or a credit card on the account must be disclosed in the table as a fee for issuance or availability under § 226.33(c)(7)(ii). This fee must be disclosed even if the fee is optional; that is, if the fee is charged only if the consumer requests checks or a credit card.

2. *Fees kept by third party.* The fees referred to in § 226.33(c)(7)(ii) include any fees that are imposed by the creditor for the availability of the reverse mortgage, whether the fees are kept by the creditor or a third party. For example, if a creditor charges the consumer for a monthly mortgage insurance premium and this fee is paid directly to a third party, the fee must be disclosed under § 226.33(e)(7)(ii).

3. *Waived or reduced fees.* If fees required to be disclosed under § 226.33(c)(7)(ii) are waived or reduced for a limited time, the introductory fees or the fact of fee waivers may be provided in the table in addition to the required fees if the creditor also discloses how long the reduced fees or waivers will remain in effect.

33(c)(7)(iii) Fees imposed by the creditor for early termination of the reverse mortgage.

1. *Applicability.* This disclosure applies to fees (such as penalty or prepayment fees) that the creditor imposes if the consumer terminates the reverse mortgage, or prepays the obligation in full, prior to its scheduled maturity. This disclosure includes waived consummation or account-opening fees for the plan, if the creditor will impose those costs on the consumer if the consumer terminates the plan or pays off the loan within a certain amount of time after account opening or consummation, respectively. The disclosure does not apply to fees that are imposed when the reverse mortgage expires in accordance with the agreement or that are associated with collection of the debt if the creditor terminates the reverse mortgage, such as attorneys' fees and court costs.

33(c)(7)(iv) Statement about other fees.

Paragraph 33(c)(7)(iv)(A).

1. *Disclosure of additional information upon request.* A creditor generally must include in the early open-end disclosure table required by § 226.33(d)(1) and (d)(4) a statement that the consumer may receive, upon request, additional information about fees applicable to the plan. Alternatively, a creditor may provide additional information about fees applicable to the plan along with the table required by § 226.33(d)(1) and (d)(4). In that case, the creditor must disclose in the table that is required by § 226.33(d)(1) and (d)(4) that additional information about fees applicable to the plan is enclosed with the table. In providing additional information about fees to a consumer upon the consumer's request prior to account opening (or along with the table required under § 226.33(d)(1) and (d)(4)), a creditor must disclose the transaction fees that are required to be disclosed under § 226.33(c)(7)(v), (c)(13)(i), and (c)(13)(ii), and a statement that other fees may apply. A creditor must use a tabular format to disclose the additional information about fees that is provided upon request or provided with the table required by § 226.33(d)(1) and (d)(4). If the consumer, prior to consummation or the opening of a plan, requests additional information about fees applicable to the plan, the creditor must provide this information as soon as reasonably possible after the request.

33(c)(7)(v) Transaction requirements.

1. *Applicability.* A limitation on automated teller machine usage need not be disclosed under this paragraph unless that is the only means by which the consumer can obtain funds.

33(c)(1) Costs to consumer.

►*33(c)(8) Loan balance growth.*◄

1. *Costs and charges to consumer—relation to finance charge.* All costs and charges to the consumer that are incurred in a reverse mortgage are included in the ►loan balance table◄ 【projected total cost of credit, and thus in the total annual loan cost rates】, whether or not the cost or charge is a finance charge under § 226.4.

2. *Annuity costs* ►*and annuity payments*◄. 【As part of the credit transaction, some creditors require or permit a consumer to purchase an annuity that immediately—or at some future time—supplements or replaces the creditor's payments.】►Section 226.40(a) prohibits a creditor from requiring a consumer to purchase any financial or insurance product, including an annuity, as a condition of obtaining a reverse mortgage. Under the safe harbor for compliance in § 226.40(a)(2), a creditor is deemed to comply with the prohibition on required purchases of financial or insurance products if, among other things, the reverse mortgage transaction is completed at least 10 calendar days before the purchase of another product. The cost of an annuity purchased after the reverse mortgage transaction is completed in accordance with the safe harbor is not considered a cost to the consumer under this section. Similarly, payments from an annuity that the consumer purchases after the reverse mortgage transaction is completed in accordance with the safe harbor are not required to be disclosed as the advances to the consumer under this section. However, if the consumer voluntarily purchases an annuity along with a reverse mortgage, and the creditor does not follow the safe harbor in § 226.40(a)(2), t◄【T】he amount paid by the consumer for the annuity is a cost to the consumer under this section, regardless of whether the annuity is purchased through the creditor or a third party【, or whether the purchase is mandatory or voluntary】. For example, this includes the costs of an annuity that a creditor offers, arranges, assists the consumer in purchasing, or that the creditor is aware the consumer is purchasing as a part of the transaction. ►Similarly, if the consumer voluntarily purchases an annuity along with a reverse mortgage, and the creditor does not follow the safe harbor in § 226.40(a)(2), the advances that the consumer will receive from the annuity must be disclosed as the advances to the consumer, rather than the proceeds used to finance the annuity.◄

3. *Disposition costs excluded.* Disposition costs incurred in connection with the sale or transfer of the property subject to the reverse mortgage are not included in the costs to the consumer under this paragraph. (However, see 【the definition of Valn in appendix K to the regulation】 comment 33(c)(8)–8 to determine the effect certain disposition costs may have on ►the disclosure of the amount the consumer will owe◄【the total annual loan cost rates】.)

【*33(c)(2) Payments to consumer.*】

►4◄【1】. *Payments upon a specified event.* The ►disclosure of the amount advanced to the consumer◄ 【projected total cost of credit】 should not reflect contingent payments in which a credit to the outstanding loan balance or a payment to the consumer's estate is made upon the occurrence of an event (for example, a "death benefit" payable if the consumer's death occurs within a certain period of time). 【Thus, the table of total annual loan cost rates required under § 226.33(b)(2) would not reflect such payments.】 At its option, however, a creditor may put an asterisk, footnote, or similar type of notation in the table next to the applicable ►payment total◄ 【total annual loan cost rate】, and state in the body of the note, apart from the table, the assumption upon which the ►payment total◄ 【total annual loan cost】 is made and any different ►payment◄ 【rate】 that would apply if the contingent benefit were paid.

【*Paragraph 33(c)(3) Additional creditor compensation.*】

►5◄【1】. *Shared appreciation or equity.* Any shared appreciation or equity that the creditor is entitled to receive pursuant to the legal obligation must be included in the ►amount the consumer will owe◄ 【total cost of a reverse mortgage loan】. For example, if a creditor agrees to a reduced interest rate on the transaction in exchange for a portion of the appreciation or equity that may be realized when the dwelling is sold, that portion is included in the amount the consumer will owe.

►6. *Assumed dwelling appreciation for shared appreciation or equity disclosure.* The creditor must assume that the dwelling's value does not appreciate unless the creditor is entitled by contract to shared appreciation or equity. Because the cost to the consumer must reflect any shared appreciation or equity, the creditor must assume that the dwelling appreciates by 4 percent per year and must state this assumption.◄

【*Paragraph 33(c)(4) Limitations on consumer liability.*】

►7◄【1】. ► *Limitations on consumer liability*◄【*In general*】. Creditors must include any limitation on the consumer's liability (such as a nonrecourse limit or an equity conservation agreement) in the ►disclosure of the amount owed by the consumer◄ 【projected total cost of credit】. These limits and agreements protect a portion of the equity in the dwelling for the consumer or the consumer's estate. For example, the following are limitations on the consumer's liability that must be included in the ►disclosure of the amount owed by the consumer◄ 【projected total cost of credit】:

i. A limit on the consumer's liability to a certain percentage of the projected value of the home.

ii. A limit on the consumer's liability to the net proceeds from the sale of the property subject to the reverse mortgage.

►8◄【2】. *Uniform assumption for* "*net proceeds*" *recourse limitations.* If the legal obligation between the parties does not specify a percentage for the "net proceeds" liability of the consumer, for purposes of the disclosures 【required by】 ►of the amount the consumer will be required to repay under◄ § 226.33►(c)(8)(ii)(C)◄, a creditor must assume that the costs associated with selling the property will equal 7 percent of the projected sale price 【(see the definition of the Valn symbol under appendix K(b)(6))】.

►9. *Set-asides.* In some reverse mortgages the creditor will set aside a portion of the loan amount to be paid for the benefit of the consumer, such as for making required repairs to the dwelling. The creditor must treat the entire amount of the funds set aside as an advance to the consumer and not merely the portion of the set-aside that the creditor estimates will be used. For example, if the creditor estimates that repairs will cost $1,000 but sets aside $1,500 (150% of the estimated cost of repairs), the entire $1,500 amount of the repair set-aside is considered an advance for the benefit of the consumer.

10. *Assumptions about type of payments to consumer.*

i. If the creditor provides the consumer with more than one of the payment options described in § 226.33(c)(5)(i) and the consumer has selected the type of payment(s) at the time the disclosure is provided, the creditor must base the disclosures on the consumer's selection(s). If the consumer has not yet selected the types of payments, the creditor must base the disclosures on the assumptions in § 226.33(c)(5)(ii).

ii. In some cases the consumer may choose to receive an initial advance, a periodic payment, or some combination of the two, but also leave some of the principal amount available for discretionary cash advances. In these instances, the creditor must assume that the consumer does not take any discretionary advances if the scheduled advances account for 50 percent or more of the principal loan amount. Otherwise, the creditor must assume that the consumer draws the entire available principal loan amount at closing or, in an open-end transaction, when the consumer becomes obligated under the plan.

(A) For example, assume that the reverse mortgage has a principal loan amount of $105,000 and that the creditor finances $5,000 in closing costs, leaving an available loan amount of $100,000. The consumer elects to take $25,000 in an initial advance, and have $25,000 paid out in the form of regular monthly installments, for a total of $50,000. The consumer chooses to leave the remaining $50,000 in a line of credit. Because the initial advance and the monthly payments account for 50 percent of the available principal amount, the creditor must assume that the consumer takes no advances from the line of credit.

(B) Alternatively, assume that the consumer elects to take $24,000 in an initial advance, have $25,000 paid out in the form of regular monthly installments and leave $51,000 in a line of credit. Because the initial advance and the monthly payments account for less than 50 percent of the available loan amount the creditor must assume that the consumer draws all $51,000 from the line of credit at closing.

11. *Shared appreciation or equity disclosure.* The creditor must disclose if it is entitled by contract to any shared appreciation or equity. For example, if the creditor is entitled by contract to 25 percent of any appreciation in the value of the dwelling, the creditor may state, "This loan includes a Shared Appreciation Agreement, which means that we will be entitled to 25 percent of any gain made when you sell or refinance your home. For example, if your home were worth $100,000 more when the loan becomes due than it is worth today, you would owe us an additional $25,000 on the loan." The disclosure must be in a form substantially similar to the Model Clause in K–7 in Appendix K to this part.

33(c)(10) Statements about risks.

1. *Changes to the plan.* If changes may occur pursuant to § 226.5b(f)(3)(i)–(v), a creditor must state that it can make changes to the plan.

33(c)(12) Additional early disclosures for open-end reverse mortgages.

33(c)(12)(i) Refund of fees under § 226.5b(e).

1. *Relation to other provisions.* Creditors should consult the rules in § 226.5b(e) regarding refund of fees if the consumer rejects the plan within three business days of receiving the disclosures required by § 226.33(d)(1).

33(c)(12)(ii) Refund of fees under § 226.40(b).

1. *Relation to other provisions.* Creditors should consult the rules in § 226.40(b) regarding refund of fees if the consumer rejects the plan within three business days of receiving counseling as required by § 226.40(b).

33(c)(12)(i)(B) Changes to disclosed terms.

1. *Relation to other provisions.* Creditors should consult the rules in § 226.5b(d) regarding refund of fees when terms change.

33(c)(12)(iv) Statement about refundability of fees.

Paragraph 33(c)(12)(iv)(A).

1. *Guaranteed terms.* If a creditor chooses not to guarantee any terms, it must disclose that all of the terms are subject to change prior to opening the plan. The creditor is permitted to guarantee some terms and not others, but must indicate which terms are subject to change.

Paragraph 33(c)(13) Additional disclosures before the first transaction under an open-end reverse mortgage.

Paragraph 33(c)(13)(i) Transaction charges.

1. *Charges imposed by person other than creditor.* Charges imposed by a third party, such as a seller of goods, shall not be disclosed in the table under this section; the third party would be responsible for disclosing the charge under § 226.9(d)(1).

Paragraph 33(c)(14) Additional disclosures for closed-end reverse mortgages.

Paragraph 33(c)(14)(i) Total payments.

1. *Calculation of total payments scheduled.* Creditors should use the assumptions in § 226.33(c)(16) and the rules under § 226.18(g) and associated commentary, and comments 17(c)(1)(iii)–1 and –3 for adjustable-rate transactions, to calculate the total payments amount.

33(c)(14)(ii) Interest and settlement charges.

1. *Calculation of interest and settlement charges.* The interest and settlement charges disclosure is identical to the finance charge, as calculated under § 226.4.

2. *Disclosure required.* The creditor must disclose the interest and settlement charges as a dollar amount, using the term interest and settlement charges, together with a brief statement as required by § 226.33(c)(14)(ii). The interest and settlement charges must be disclosed only as a total amount; the components of the interest and settlement charges amount may not be itemized in the table required by § 226.33(d)(4) except as required or permitted by § 226.33(c)(7), although the regulation does not prohibit itemization elsewhere.

33(c)(14)(iii) Amount financed.

1. *Principal loan amount.* In a closed-end reverse mortgage, the principal loan amount is the same as the loan amount disclosed for

closed-end mortgage transactions under § 226.38(a)(1). As provided in that section, the loan amount is the principal amount the consumer will borrow reflected in the loan contract. Thus the principal loan amount includes all amounts financed as part of the transaction, whether they are finance charges or not.

2. *Disclosure required.* The net amount of credit extended must be disclosed using the term "amount financed" together with a descriptive statement as required by § 226.33(c)(14)(iii).

33(c)(16) Assumptions for closed-end disclosures.

1. *Basis of disclosures.* The creditor's use of the rules in § 226.33(c)(16) does not, by itself, make the disclosures estimates. Thus, creditors may use these rules for the disclosures required by proposed § 226.19(a)(2) and comply with that section's limitation on using estimated disclosures.

33(d) Special disclosure requirements for reverse mortgages.

1. *Business days.*

i. For purposes of providing the early open-end reverse mortgage disclosure within three business days after application as required by § 226.33(d)(1)(i), the term "business day" means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions.

ii. For purposes of providing disclosures for open-end reverse mortgages at least three business days before account opening as required by § 226.33(d)(1)(ii) and (d)(2), "business day" has the same meaning as in comment 31(c)(1)–1—all calendar days except Sundays and the Federal legal holidays listed in 5 U.S.C. 6103(a). Thus, for example, if disclosures are provided on a Friday, June 1, consummation could occur any time on Tuesday, June 5, the third business day following receipt of the disclosures.

33(d)(1) Timing of early open-end reverse mortgage disclosures.

1. *Denial or withdrawal of application.* Section 226.33(d)(1) provides that creditors must deliver or mail disclosures required by § 226.33(c) to the consumer not later than three business days before the first transaction under the plan, or three business days following receipt of a consumer's application by the creditor, whichever is earlier. If the creditor determines within the three-day period that an application will not be approved, the creditor need not provide the disclosures. Similarly, if the consumer withdraws the application within this three-day period, the creditor need not provide the disclosures.

33(d)(4) Form of disclosures; tabular format.

1. *Terminology.* Section 226.33(d)(4) generally requires that the headings, content and format of the tabular disclosures be substantially similar, but need not be identical, to the applicable tables in Appendix K to part 226. See § 226.5(a)(2) for terminology requirements applicable to disclosures provided pursuant to § 226.33(d)(1) and (d)(2).

2. *Other format requirements.* See § 226.33(c)(6)(i)(A)(*1*)(*i*) for formatting requirements applicable to disclosure of variable rates in the table required by § 226.33(d)(1) and (d)(2). See comment 33(c)(7)(iv)(A)–1 for format requirements that apply to information that a creditor provides to a consumer upon request.

3. *Highlighting of disclosures.* i. *In general.* See Samples K–4, K–5 and K–6 for guidance on providing the disclosures described in § 226.33(d)(4)(vi) in bold text.

ii. *Itemized list of fees to open the plan.* The total amount of fees for consummation or account opening disclosed under § 226.33(c)(7)(i) must be disclosed in bold text. The itemization of those fees that is also required to be disclosed under § 226.33(c)(7)(i) must not be disclosed in bold text.

4. *Clear and conspicuous standard.* See comment 5(a)(1)–1 for the clear and conspicuous standard applicable to § 226.33(d)(1) and (d)(2) disclosures. See comments 37(a)–1, and 37(a)(1)–1 through –3 for the clear and conspicuous standard applicable to § 226.33(d)(3) disclosures.

5. *Tabular disclosures required under § 226.33(d)(2).* The account-opening disclosures required by § 226.33(d)(2) and early open-end disclosures required by § 226.33(d)(1) generally follow the same formatting requirements, except for the following:

i. A creditor may not disclose below the account-opening table an identification of any disclosed term that is subject to change prior to opening the plan.

ii. A creditor may not disclose in the account-opening table a statement about the right to a refund of fees pursuant to §§ 226.5b(e) or 226.40(b).

iii. A creditor must disclose in the account-opening table the total of all one-time fees imposed by the creditor and third parties to open the plan, and may not disclose the highest amount of possible fees as allowed under § 226.33(c)(7)(i)(A). In addition, a creditor must disclose in the account-opening table an itemization of all one-time fees imposed by the creditor and third parties to open the plan, and may not disclose a range for those fees, as otherwise allowed under § 226.33(c)(7)(i)(B).

iv. A creditor may not disclose below the account-opening table a statement that the consumer may be entitled to a refund of all fees paid if the consumer decides not to open the plan pursuant to § 226.5b(d).

33(d)(5) Disclosures based on a percentage.

1. *Transaction requirements.* Section 226.33(c)(7)(v) requires a creditor to disclose in the table required under § 226.33(d) any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum draw requirements. If any amount that must be disclosed under § 226.33(c)(7)(v) is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the transaction amount.

33(e) Reverse mortgage advertising.

33(e)(1) Scope.

1. *In general.* The requirements and limitations of § 226.33(e) apply to both open-end and closed-end reverse mortgages. The requirements and limitations are in addition to those contained in other subparts of this part, including advertising requirements in § 226.16 in Subpart B or § 226.24 in Subpart C, as applicable. *See* § 226.31(a).

33(e)(2) Clear and conspicuous standard.

1. *Clear and conspicuous standard—general.* Advertisements for reverse mortgages are subject to the general "clear and conspicuous" standard for Subpart B or Subpart C, as applicable. *See* comment 33(e)(1)–1. Section 226.33(e) prescribes no specific rules for the format of the required disclosures other than the following: The disclosures required by § 226.33(e)(3)–(9) must be made with equal prominence and in close proximity to each triggering statement, and the disclosure required by § 226.33(e)(10) must be at least as conspicuous as the triggering statement. Disclosures need not be printed in a certain type size and need not appear in any particular place in the advertisement, except as necessary to comply with the aforementioned requirements. For a discussion of the equal prominence and close proximity requirements, see comment 33(e)(2)–2.

2. *Clear and conspicuous standard—advertisements for reverse mortgages.* Information required to be disclosed under § 226.33(e) that is in the same type size as the statement that triggered the required disclosure is deemed to be equally prominent with such statement. If a disclosure required by § 226.33(e) is made with greater prominence than the statement that triggered the required disclosure, the equal prominence requirement is satisfied. Information required to be disclosed under § 226.33(e) that is immediately next to or directly above or below a statement that triggered the required disclosure, without any intervening text or graphical displays and not in a footnote, is deemed to be closely proximate to such statement.

3. *Clear and conspicuous standard—Internet advertisements for reverse mortgages.* For purposes of § 226.33(e)(2), creditors may rely on comment 16–3 or comment 24(b)–3, as applicable, in determining whether a required disclosure in an Internet advertisement for a reverse mortgage is made clearly and conspicuously.

4. *Clear and conspicuous standard—televised advertisements for reverse mortgages.* For purposes of § 226.33(e)(2), creditors may rely on comment 16–4 or comment 24(b)–4, as applicable, to determine whether a required disclosure in a televised advertisement for a reverse mortgage is made clearly and conspicuously.

5. *Clear and conspicuous standard—oral advertisements for reverse mortgages.* For purposes of § 226.33(e)(2), creditors may rely on comment 16–5 or comment 24(b)–5, as applicable, to determine whether a required disclosure in an oral advertisement for a reverse mortgage is made clearly and conspicuously.

33(e)(3) Need to repay loan.

1. *Examples.* The following examples illustrate how an advertisement may disclose the clarifying information required by § 226.33(e)(3):

i. "You are eligible for benefits under the government's Home Equity Conversion

Mortgage program. A reverse mortgage under the program is a loan that must be repaid."

ii. "Congress recently improved the HECM benefits you can receive. A HECM is a loan that you must repay."

iii. "The U.S. Department of Housing and Urban Development has increased the aid available to people over the age of 62. The aid is available through a loan that must be repaid."

2. *Applicability.* An advertisement may not state that a reverse mortgage is a government benefit unless the reverse mortgage is associated with a government program, such as the U.S. Department of Housing and Urban Development's Home Equity Conversion Mortgage program. If a reverse mortgage is associated with a government program, then an advertisement may contain a statement that a reverse mortgage is a government benefit; however, the statement must be accompanied by a statement that a reverse mortgage is a loan that must be repaid, as illustrated in the examples provided in comment 33(e)(3)–1. A statement that a reverse mortgage is a loan that must be repaid will not cure a violation of § 226.16(d)(9) or § 226.24(*i*)(3). These provisions prohibit misrepresentations of government endorsement or sponsorship in an advertisement for, respectively, open-end or closed-end mortgages, including reverse mortgages. *See* comment 33(e)(1)–1.

3. *Statements regarding government insurance or other support.* A statement that a reverse mortgage is a "government-supported loan" or a "government loan program" or is a loan insured, authorized, developed, created, or otherwise sponsored or endorsed by a Federal, state, or local government entity does not trigger the requirement under § 226.33(e)(3) to disclose that a reverse mortgage is a loan that must be repaid. The following examples illustrate statements that do not trigger the requirement to disclose this clarifying information:

i. "A Home Equity Conversion Mortgage is a loan insured by the U.S. Department of Housing and Urban Development."

ii. "Congress developed the HECM loan program to help senior citizens."

4. *Other meanings or terms.* A reference to benefits or other aid through a government program unrelated to reverse mortgages does not trigger the requirement under § 226.33(e)(3) to disclose clarifying information. Further, using the term "government benefit" to mean "advantage" does not trigger the requirement to disclose clarifying information. The following examples illustrate statements that do not trigger a requirement to disclose clarifying information:

i. "A reverse mortgage does not affect your Social Security benefits." The term "benefits" is used to refer to benefits through a government program unrelated to reverse mortgages and therefore does not trigger the requirement in § 226.33(e)(3) to disclose clarifying information. (However, the statement triggers the requirement to disclose that a reverse mortgage may affect benefits under some government programs, such as Supplemental Security Income and Medicaid. *See* § 226.33(e)(9) and accompanying commentary.)

ii. "A home equity conversion mortgage provides several benefits, including the ability to stay in your home." The term "benefits" is used to mean "advantages" and, therefore, does not trigger the requirement to disclose clarifying information.

33(e)(4) Events that end loan term.

1. *Examples.* The following examples illustrate how an advertisement may disclose the clarifying information required by § 226.33(e)(4):

i. "You get payments for as long as you live, except that payments may end sooner in some circumstances. For example, you do not get payments for as long as you live if you sell the home or live somewhere else for longer than the loan agreement allows."

ii. "You can have lifetime access to a line of credit. However, you may not have lifetime access in certain circumstances, including if you sell your home or live in another place longer than [specify time period]."

iii. "Never repay during your lifetime, except that you may have to repay early in some cases, such as if you sell your house or live somewhere else for longer than the time stated in the loan contract."

2. *Applicability.* The disclosures required by § 226.33(e)(4)(A) and (B) need be made only if applicable. Any disclosure not relevant to a particular statement or advertisement may be omitted.

3. *Format; order of disclosures.* Section 226.33(e)(4) does not require the use of a particular format in providing the disclosures set forth in § 226.33(e)(4)(A) and (B), other than requiring that they be equally prominent with and in close proximity to each triggering statement. An advertisement need not make all of the disclosures required by § 226.33(e)(4) in a single sentence. For example, an advertisement may make the required disclosures using a list format. An advertisement may state the disclosures required by § 226.33(e)(4) in any order.

4. *Additional circumstances.* An advertisement for a reverse mortgage may state additional circumstances in which payments or access to a line of credit for a reverse mortgage or the term of a reverse mortgage will end during a consumer's lifetime, for example, where a consumer chooses to receive payments for a specific time period. A statement of such additional circumstances must be presented in a way that does not obscure the disclosures set forth in § 226.33(e)(4)(A) and (B), however.

33(e)(5) Risk of foreclosure.

1. *Examples.* The following examples illustrate how an advertisement for a reverse mortgage may disclose the clarifying information required by § 226.33(e)(5):

i. "You cannot lose your home except in certain circumstances, including if you live somewhere else for longer than allowed by the loan agreement or you do not pay taxes or insurance."

ii. "There is no risk to your house unless you do not meet the loan conditions, for example if you live in another place for longer than [specify time period] or do not pay taxes and insurance."

2. *Applicability.* The disclosures required by § 226.33(e)(5)(A) and (B) need be made only if applicable. Any disclosure not relevant to a particular advertisement may be omitted.

3. *Format; order of disclosures.* Section 226.33(e)(5) does not require the use of a particular format in providing the disclosures set forth in § 226.33(e)(5)(A) and (B), other than requiring that they be equally prominent with and in close proximity to each triggering statement. An advertisement need not make all of the disclosures required by § 226.33(e)(4) in a single sentence. For example, an advertisement may make the required disclosures using a list format. An advertisement may state the disclosures required by § 226.33(e)(4) in any order.

4. *Additional circumstances.* An advertisement for a reverse mortgage may state additional circumstances in which foreclosure may occur. A statement of such additional circumstances must be presented in a way that does not obscure the disclosures set forth in § 226.33(e)(5)(A) and (B), however.

33(e)(6) Amount owed.

1. *Examples.* The following examples illustrate how an advertisement for a reverse mortgage may disclose the clarifying information required by § 226.33(e)(6):

i. "Your heirs cannot owe more than the value of your house, unless they want to keep the house when the reverse mortgage is due. To keep the house, they must pay the entire loan balance, which may be higher than the house's value."

ii. "You never repay more than your home is worth, unless you want to keep your home when the reverse mortgage is due. If you want to keep your home, you must pay the whole loan balance, which may be more than your home is worth."

iii. "Your repayment is limited to your home's value if your home is sold to repay the loan. You can keep your home if you pay the total loan balance, which may be more than the home is worth."

33(e)(7) Payments for taxes and insurance.

1. *Examples.* Under § 226.33(e)(7), if an advertisement states that payments are not required for a reverse mortgage, the advertisement must disclose that a consumer must pay taxes and insurance premiums, if applicable. The following examples illustrate how an advertisement for a reverse mortgage may disclose the clarifying information required by § 226.33(e)(7):

i. "There are no loan payments for a reverse mortgage. You continue to pay for property taxes and insurance."

ii. "You do not have to make monthly mortgage payments, but you must pay for property taxes and insurance."

33(e)(8) Government fee limitation.

1. *Examples.* Under § 226.33(e)(8), if an advertisement states that a government limits or regulates fees or other costs for a reverse mortgage, the advertisement shall clearly and conspicuously disclose that costs may vary among creditors and loan types and less expensive alternatives may be available. The following examples illustrate how an advertisement for a reverse mortgage may disclose the clarifying information required by § 226.33(e)(8):

i. "The government has capped fees for HECMs. Costs may vary by lender or loan type, and cheaper alternatives may be available."

ii. "Maximum HECM fees are set by law. There can be different charges by creditor or loan type, and you may be able to find less expensive loans."

33(e)(9) Disclosure of effects on eligibility for government programs.

1. *Examples.* Under § 226.33(e)(9), if an advertisement states that a reverse mortgage does not affect a consumer's benefits from or eligibility for a government program, the advertisement must disclose that a reverse mortgage may affect benefits from or eligibility for some government programs such as Supplemental Security Income and Medicaid. The following examples illustrate how an advertisement may disclose the clarifying information required by § 226.33(e)(9):

i. "A reverse mortgage usually does not affect your eligibility for Social Security or Medicare. It may affect eligibility for other government programs, such as Supplemental Security Income and Medicaid."

ii. "Social Security and Medicare benefits are not affected, but some other government benefits may be affected, such as Supplemental Security Income and Medicaid."

33(e)(10) Credit counseling information.

1. *Accompanying telephone number and Internet Web site.* Under § 226.33(e)(10), if an advertisement for a reverse mortgage contains a reference to housing or credit counseling, the advertisement must disclose a telephone number and Internet Web site for housing counseling resources maintained by the U.S. Department of Housing and Urban Development. The disclosure of the telephone number and Web site must be at least as conspicuous as any reference to housing or credit counseling, but this disclosure need not accompany each reference to housing or credit counseling in the advertisement. Identifying language must accompany the statement of the telephone number and Internet Web site for housing counseling resources maintained by U.S. Department of Housing and Urban Development, such as: "For information about housing counseling options, call [telephone number] or go to [Internet Web site]."◀

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Section 226.34—Prohibited Acts or Practices in Connection With Credit Subject to § 226.32

34(a) Prohibited acts or practices for loans subject to § 226.32.

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34(a)(4) Repayment ability.

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4. ❲*Discounted introductory rates and non-amortizing or negatively-amortizing payments.* A credit agreement may determine a consumer's initial payments using a temporarily discounted interest rate or permit the consumer to make initial payments that are non-amortizing or negatively amortizing. (Negative amortization is permissible for loans covered by § 226.35(a), but not § 226.32). In such cases the creditor may determine repayment ability using the assumptions provided in § 226.34(a)(4)(iv).❳▶❲Reserved.❳◀

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34(a)(4)(iv) Exclusions from presumption of compliance.

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▶3. *Short-term balloon loans.* Under § 226.34(a)(4)(iv)(B), a creditor cannot obtain the presumption of compliance provided in § 226.34(a)(4)(iii) for a balloon loan with a term of less than seven years ("short-term balloon loan"). Section 226.34(a)(4) does not, however, prohibit short-term balloon loans that are higher-priced mortgage loans. In making a short-term balloon loan that is a higher-priced mortgage loan, the creditor must use prudent underwriting standards and, after considering a consumer's income, employment, obligations and assets other than the collateral, determine that the value of the collateral (the home) is not the basis for repaying the obligation (including the balloon payment). This requirement does not require the creditor to verify that the consumer has assets and income at the time of consummation that would be sufficient to pay the balloon payment when it comes due. In addition to verifying the consumer's ability to make the regular periodic payments, the creditor should verify that the consumer would likely be able to satisfy the balloon payment by refinancing the loan or through income or assets other than the collateral. The creditor should consider factors such as the loan-to-value ratio and the borrower's debt-to-income ratio or residual income at the time of consummation. For instance, a consumer with a high debt-to-income ratio, or with little or no equity in the property, may be less likely to be able to refinance the loan before the balloon payment comes due than a borrower with lower debt-to-income and loan-to-value ratios. The creditor is not required to estimate the consumer's future financial circumstances, interest rate environment, and home value.◀

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Section 226.35—Prohibited Acts or Practices in Connection with Higher-Priced Mortgage Loans

35(a) Higher-priced mortgage loans.

▶*35(a)(2) Definitions.*◀

Paragraph 35(a)(2)▶*(i)*◀.

▶1. *Transaction coverage rate.* The transaction coverage rate is calculated solely for purposes of determining whether a transaction is subject to § 226.35. The creditor is not required to disclose it to the consumer. The creditor determines the transaction coverage rate in the same manner as the transaction's annual percentage rate, except that, for purposes of calculating the transaction coverage rate and determining § 226.35 coverage, the value of the prepaid finance charge is modified in accordance with § 226.35(a)(2)(i). Under that section, only prepaid finance charges retained by the creditor, its affiliate, or a mortgage broker are treated as prepaid finance charges in determining the transaction coverage rate, and any other fees or charges that are otherwise included in the prepaid finance charge for purposes of calculating the annual percentage rate are disregarded. For example, assume a transaction in which the creditor charges one discount point, an underwriting fee is imposed and paid to an affiliate of the creditor, an origination charge is imposed and paid to a mortgage broker, and a mortgage insurance premium is paid at consummation to a mortgage insurer that is not the creditor's affiliate. For purposes of the annual percentage rate disclosed to the consumer, all of the listed charges are included in the prepaid finance charge; for purposes of the transaction coverage rate, however, the mortgage insurance premium is excluded from the modified prepaid finance charge. The transaction coverage rate that results from these special rules must be compared to the average prime offer rate to determine whether the transaction is subject to § 226.35.

2. *Inclusion of finance charges in modified prepaid finance charge; mortgage broker charges.* For purposes of the special rules under § 226.35(a)(2)(i), the modified prepaid finance charge includes only items that are finance charges, consistent with the definition of prepaid finance charge in § 226.2(a)(23); charges that are not included in the prepaid finance charge for annual percentage rate purposes also should not be included in the modified prepaid finance charge for transaction coverage rate purposes. Accordingly, the inclusion of charges retained by a mortgage broker is limited to broker compensation that otherwise constitutes a prepaid finance charge. Compensation paid by the creditor to a mortgage broker under a separate arrangement (e.g., compensation that comes from "yield spread premium") is not included because it is not included for annual percentage rate purposes, although it may be included if it comes from amounts paid by the consumer to the creditor that are prepaid finance charges, such as points. *See* comment 4(a)(3)–3. If mortgage broker compensation comes from amounts paid by the consumer to the creditor that are finance charges but not prepaid finance charges, such as interest, those amounts affect the transaction coverage rate just as they affect the annual percentage rate, but the broker compensation itself does not affect the transaction coverage rate directly. For example, assume a transaction in which a mortgage broker imposes a $1,000 origination charge:

i. If the $1,000 charge comes from yield-spread premium derived from the interest rate that will be charged to the consumer during the loan's term, the charge is excluded from the modified prepaid finance charge for transaction coverage rate purposes, just as it is excluded from the prepaid finance charge for annual percentage rate purposes in accordance with comment 4(a)(3)–3.

ii. In contrast, if the consumer pays the $1,000 charge directly in cash or by check at consummation or it is withheld from the proceeds of the credit, the charge is included for both annual percentage rate and transaction coverage rate purposes.

Paragraph 35(a)(2)(ii).◀

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▶*Paragraph 35(a)(3).*

1. *Construction-permanent loans.* Under § 226.35(a)(3), § 226.35 does not apply to a

transaction to finance the initial construction of a dwelling. When such a transaction may be permanently financed by the same creditor, § 226.17(c)(6)(ii) permits the creditor to give either one combined disclosure for both the construction financing and the permanent financing, or a separate set of disclosures for each of the two phases as though they were two separate transactions. *See also* comment 17(c)(6)–2. Section 226.17(c)(6)(ii) addresses only how a creditor may elect to disclose a combined construction-permanent transaction. Which disclosure option a creditor elects under § 226.17(c)(6)(ii) does not affect the determination of whether the transaction is subject to § 226.35. Whether the creditor discloses the two phases as a single transaction or as two separate transactions, a single transaction coverage rate, reflecting the appropriate charges from both phases, must be calculated for the transaction in accordance with § 226.35(a). The transaction coverage rate must be compared to the average prime offer rate for a comparable transaction to determine coverage under § 226.35. If the transaction is determined to be a higher-priced mortgage loan, only the permanent phase is subject to the requirements of § 226.35. Thus, for example, the requirement to establish an escrow account prior to consummation of a higher-priced mortgage loan secured by a first lien on a principal dwelling, under § 226.35(b)(3), applies only to the permanent phase and not to the construction phase.◀

35(b) Rules for higher-priced mortgage loans.

1. *Effective date▶and scope◀.* For guidance on the applicability of the rules in section 226.35(b), see comment▶s◀ 1(d)(5)–1▶ and 20(a)(1)(i)–2◀.

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Section 226.38—Content of Disclosures for Closed-End Mortgages

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38(a) Loan summary.

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38(a)(5) Prepayment penalty.

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2. *Penalty.* The term "penalty" as used in § 226.38(a)(5) encompasses only those charges that are assessed solely because of the prepayment in full of a transaction in which the interest calculation takes account of all scheduled reductions in principal. Charges which are penalties include, for example:

i. Charges determined by treating the loan balance as outstanding for a period after prepayment in full and applying the interest rate to such [“balance.”] ▶“balance,” even if the charge results from the interest accrual amortization method used on the transaction. “Interest accrual amortization” refers to the method by which the amount of interest due for each period (e.g., month) in a transaction’s term is determined. For example, “monthly interest accrual amortization” treats each payment as made on the scheduled, monthly due date even if it is actually paid early or late (until the expiration of a grace period). Thus, under monthly interest accrual amortization, if the amount of interest due on May 1 for the preceding month of April is $3,000, the creditor will require payment of $3,000 in interest whether the payment is made on April 20, on May 1, or on May 10. In this example, if the interest charged for the month of April upon prepayment in full on April 20 is $3,000, the charge constitutes a prepayment penalty of $1,000 because the amount of interest actually earned through April 20 is only $2,000.◀

ii. A minimum finance charge in a simple-interest transaction.

iii. Fees, such as loan closing costs, that are waived unless the consumer prepays the obligation.

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38(h) [Credit] ▶Required or voluntary credit◀ insurance and debt cancellation coverage and debt suspension coverage.

1. *Location.* This disclosure may, at the creditor’s option, appear apart from the other disclosures. It may appear with any other information, including the amount financed itemization, any information prescribed by State law, or other information. When this information is disclosed with the other segregated disclosures, however, no additional explanatory material may be included.

[*Paragraph 38(h)(5).*]

[1.]▶2.◀ *Compliance.* If, based on the creditor’s review of the consumer’s age and/or employment status ▶prior to or◀ at the time of enrollment in the product, the consumer would not be eligible to receive the benefits of the product, then providing the disclosure required under [§ 226.38(h)(5)]▶§ 226.4(d)(1)(i)(D)(*5*)◀ would not comply with [this provision]▶the requirements of § 226.38(h)◀. That is, if the consumer does not meet the age and/or employment eligibility criteria, then the creditor cannot state that the consumer may be eligible to receive benefits and cannot comply with [this requirement]▶§ 226.38(h)◀. If the creditor offers a bundled product (such as credit life insurance combined with credit involuntary unemployment insurance) and the consumer is not eligible for all of the bundled products, then providing the disclosure required under [§ 226.38(h)(5)]▶§ 226.4(d)(1)(i)(D)(*5*)◀ would not comply with [this provision]▶§ 226.38(h)◀. However, the disclosure still satisfies the requirements of this section if an event subsequent to enrollment, such as the consumer passing the age limit of the product, makes the consumer ineligible for the product based on the product’s age or employment eligibility restrictions.

[2. *Reasonably reliable evidence.* A disclosure under § 226.38(h)(5) shall be deemed to comply with this section if the creditor used reasonably reliable evidence to determine whether the consumer met the age or employment eligibility criteria of the product. Reasonably reliable evidence of a consumer’s age would include using the date of birth on the consumer’s credit application, on the driver’s license or other government-issued identification, or on the credit report. Reasonably reliable evidence of a consumer’s employment status would include a consumer’s statement on a credit application form, an Internal Revenue Service Form W–2, tax returns, payroll receipts, or other written evidence such as a letter or e-mail from the consumer or the consumer’s employer.]

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▶ *Section 226.40—Prohibited Acts or Practices in Connection With Reverse Mortgages*

40(a) Requiring the purchase of other financial or insurance products.

40(a)(1) Financial or insurance products.

1. *Covered products and services.* For purposes of § 226.40(a), the term “financial or insurance product” includes bank products, except for transaction accounts and savings deposits (as defined in Regulation D, 12 CFR part 204) established to disburse reverse mortgage proceeds. The term also includes nonbank products. For example, the term includes extensions of credit; trust services; time deposits as defined in Regulation D, 12 CFR part 204 (such as certificates of deposit); annuities; securities and other nondepository investment products; financial planning services; life insurance; long-term care insurance; credit insurance; and debt cancellation and debt suspension coverage.

2. *Exclusion for products and services customarily required.* Products and services that are customarily required to protect the creditor’s interest in the collateral or otherwise mitigate the creditor’s risk of loss are excluded from the definition of “financial product or service” for purposes of § 226.40(a). Examples of excluded products and services include appraisal or other property valuation services; title insurance; hazard, flood, or other peril insurance; home improvement services required to originate the reverse mortgage; and mortgage insurance where consumers are required to pay the premiums, such as the insurance required by the U.S. Department of Housing and Urban Development to originate a reverse mortgage under the Home Equity Conversion Mortgage program.

40(a)(2) Safe harbor.

1. *Safe harbor conditions not met.* If the safe harbor conditions in § 226.40(a)(2) are not met, whether a consumer is required to purchase a financial or insurance product to obtain a reverse mortgage is a factual question. For example, where the safe harbor conditions are not met for a particular reverse mortgage transaction, and the terms or features of that reverse mortgage are not available unless the consumer purchases another product, the consumer has been required to purchase that product to obtain the reverse mortgage.

Paragraph 40(a)(2)(ii).

1. *Obligated to purchase.* Whether a consumer has become obligated to purchase a financial or insurance product for purposes of the safe harbor under § 226.40(a)(2) is a factual inquiry. A consumer becomes obligated to purchase a financial or insurance product, for example, when the consumer signs an agreement to purchase the product, even if the purchase will occur in the future. A consumer also becomes obligated to purchase a product when the consumer signs an agreement to purchase a product, but has

the option to cancel the purchase for a period of time after the purchase occurs. If a consumer consummates a reverse mortgage on Monday, June 1, the creditor will qualify for the safe harbor only if the consumer does not sign an agreement to purchase another financial or insurance product from the persons enumerated in § 226.40(a)(2)(ii)(A)–(D)) until Thursday, June 11.

Paragraph 40(a)(2)(ii)(D).

1. *Examples of receiving compensation for the consumer's purchase of another product.* If, within 10 days of consummating a reverse mortgage, the consumer purchases another financial or insurance product from a party that is not affiliated with the creditor, the creditor qualifies for the safe harbor under § 226.40(a)(2)(ii) if the creditor and its affiliates do not receive compensation for the purchase. The creditor receives compensation for the consumer's purchase of another financial or insurance product if the creditor is paid a fee because the consumer purchases the product. By contrast, the creditor does not receive compensation for the purchase if the creditor sells a customer list to a nonaffiliated third party, which, in turn, sells a financial or insurance product to a reverse mortgage consumer on the list within the 10-day waiting period, as long as the creditor receives no compensation directly or indirectly related to whether the consumer purchases the product.

40(b) Counseling.

40(b)(1) Counseling required.

1. *Originating a reverse mortgage.* A creditor or other person may accept an application for a reverse mortgage and begin to process the application (by, for example, ordering an appraisal or title search) before the consumer has obtained the counseling required under § 226.40(b)(1). A creditor or other person may not, however, open a reverse mortgage account (for an open-end reverse mortgage) or consummate a reverse mortgage loan (for a closed-end reverse mortgage) before the consumer has obtained the counseling required under § 226.40(b)(1).

2. *Safe harbor.* A creditor may rely on a certificate of counseling in a form approved by the Secretary of the U.S. Department of Housing and Urban Development pursuant to 12 U.S.C. 1715z–20(f), or a substantially similar form, to confirm that the consumer obtained the counseling required under § 226.40(b)(1).

40(b)(2) Nonrefundable fees prohibited.

Paragraph 40(b)(2)(i).

1. *Collection of fees.* A fee, including an application fee, may be collected earlier than three business days after the consumer obtains counseling. However, the fee must be refunded if, within three business days of obtaining counseling, the consumer decides not to enter into the reverse mortgage transaction.

2. *Timing for imposition of nonrefundable fees.* To determine when the consumer obtained counseling for purposes of imposing a nonrefundable fee, a creditor or other person may rely on the date of the counseling session indicated on a certificate of counseling in a form approved by the Secretary of the U.S. Department of Housing and Urban Development pursuant to 12 U.S.C. 1715z–20(f), or a substantially similar form. *See* comment 40(b)(1)–2.

3. *Imposition of fees—reverse mortgages subject to § 226.5b.* For reverse mortgages subject to § 226.5b, two restrictions on imposing nonrefundable fees apply. The first restriction is under § 226.5b(e), which prohibits imposing a nonrefundable fee until after the third business day following the consumer's receipt of the early disclosures required under § 226.33(d)(1). The second restriction is under § 226.40(b)(2), which prohibits imposing a nonrefundable fee (other than a fee for required counseling (*see* § 226.40(b)(2)(ii))) until after the third business day following the consumer's completion of counseling. A nonrefundable fee may not be imposed until both waiting periods have ended. Thus, if three business days have elapsed since the consumer received the early disclosures, but fewer than three business days have elapsed since the consumer obtained counseling, the creditor or other person may not impose a nonrefundable fee (except a fee for required counseling) until after the third business day following the consumer's completion of counseling. Alternatively, if three business days have elapsed since the consumer obtained counseling, but fewer than three business days have elapsed since the consumer received the early disclosures, the creditor or other person may not impose a nonrefundable fee until after the third business day following the consumer's receipt of the early disclosures.

4. *Imposition of fees—reverse mortgages subject to § 226.19.* i. Under § 226.19(a)(1)(ii), which applies to closed-end, real property- or dwelling-secured mortgages, neither the creditor nor any other person may impose any fees (other than a fee for obtaining a consumer's credit history (*see* § 226.19(a)(1)(iii)) and a fee for required counseling (see § 226.19(a)(1)(v))) in connection with the consumer's application before the consumer has received the early disclosures required under § 226.19(a)(1)(i). Thus, in connection with a closed-end reverse mortgage, neither the creditor nor any other person may impose a fee (except for a fee for obtaining a consumer's credit history or required counseling) until the consumer has received the early disclosures required under §§ 226.19(a)(1)(i) and 226.33(d)(3). In addition, the restriction on imposing nonrefundable fees under § 226.40(b)(2) applies to closed-end reverse mortgages, so neither the creditor nor any other person may impose a nonrefundable fee (other than a fee for required counseling (see § 226.40(b)(2)(ii))) in connection with a closed-end reverse mortgage until after the third business day following the consumer's completion of counseling. Thus, for closed-end reverse mortgages, if the consumer has received the early disclosures, but fewer than three business days have elapsed since the consumer obtained counseling, the creditor or other person may not impose a nonrefundable fee on the consumer (except a fee for required counseling) until after the third business day following the consumer's completion of counseling. Alternatively, if three business days have elapsed since the consumer obtained counseling, but the consumer has not received the early disclosures, the creditor or other person may not impose any fees—refundable or nonrefundable (except for a fee for obtaining a consumer's credit history or required counseling)—until the consumer has received the early disclosures.

ii. For reverse mortgages subject to § 226.19, two restrictions on imposing nonrefundable fees apply. The first restriction is under § 226.19(a)(1)(iv), which prohibits imposing a nonrefundable fee (other than a fee for obtaining a consumer's credit history (*see* § 226.19(a)(1)(iii)) and a fee for required counseling (*see* § 226.19(a)(1)(v)) until after the third business day following the consumer's receipt of the early disclosures required under §§ 226.19(a)(1)(i) and 226.33(d)(3). The second restriction is under § 226.40(b)(2), which prohibits imposing a nonrefundable fee (other than a fee for required counseling (see § 226.40(b)(2)(ii))) until after the third business day following the consumer's completion of counseling. A nonrefundable fee generally may not be imposed until both waiting periods have ended. Thus, if three business days have elapsed since the consumer received the early disclosures, but fewer than three business days have elapsed since the consumer completed counseling, the creditor or other person may not impose a nonrefundable fee (except for a fee for required counseling) until after the third business day following the consumer's completion of counseling. Alternatively, if three business days have elapsed since the consumer obtained counseling, but fewer than three business days have elapsed since the consumer received the early disclosures, the creditor or other person may not impose a nonrefundable fee (except for a fee for obtaining a consumer's credit history or required counseling) until after the third business day following the consumer's receipt of the early disclosures.

5. *Definition of "business day."* For purposes of § 226.40(b)(2), the more precise definition of "business day" (meaning all calendar days except Sundays and specified Federal holidays) under § 226.2(a)(6) applies. *See* comment 2(a)(6)–2.

Paragraph 40(b)(2)(ii).

1. *Counseling fee.* A fee for the counseling required under § 226.40(b)(1) may be imposed by a counselor or counseling agency meeting the qualifications in § 226.40(b)(1) earlier than the expiration of three business days after the consumer obtains counseling and need not be refunded under the circumstances described in comment 40(b)(2)(i)–1.

40(b)(3) Content of counseling.

1. *Safe harbor.* Counseling that conveys the information required by the Secretary of the U.S. Department of Housing and Urban Development to be provided pursuant to 12 U.S.C. 1715z–20(f), or substantially similar information, satisfies the requirements of § 226.40(b)(3).

40(b)(5) Type of counseling.

1. *Internet communication.* Counseling considered face-to-face or by telephone includes counseling provided via an Internet or other connection allowing the counselor and consumer to see and hear one another in real time and communication via an Internet or other connection designed to accommodate persons with disabilities.

40(b)(6) Independence of counselor.

40(b)(6)(i) Counselor compensation.

1. *Prohibited compensation.* Section 226.40(b)(6)(i) prohibits a creditor or any person involved in originating a reverse mortgage, such as a mortgage broker, from compensating a counselor or counseling agency for reverse mortgage counseling services related to a particular transaction. Section 226.40(b)(6)(i) does not prohibit a creditor or other person from arranging for the counseling fee to be financed as part of a reverse mortgage transaction.

40(b)(6)(ii) Steering.

1. *Safe harbor.* To comply with 226.40(b)(6)(ii), a creditor or other person need not in all cases provide a list of at least five counselors or counseling agencies to the consumer. For example, if the consumer received reverse mortgage counseling that complies with § 226.40(b)(i) before any initial communication between the consumer and the creditor or other person involved in originating a reverse mortgage, the consumer would have already obtained the counseling needed to satisfy § 226.40(b)(1). Therefore, a list of counselors or counseling agencies would be unnecessary.◀

▶*Section 226.41—Servicer's Response to Borrower's Request for Information*

1. *Reasonable time.* The servicer must provide the required information to the consumer within a reasonable time after the consumer's written request. For example, it would be reasonable under most circumstances to provide the required information within ten business days of receipt of the consumer's written request.◀

* * * * *

Appendices G and H—Open-End and Closed-End Model Forms and Clauses

1. *Permissible changes.* Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. Creditors may make certain changes in the format or content of the forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the act's protection from liability▶.◀ [, except] ▶However,◀ formatting changes may not be made to ▶the following◀ model forms ▶, model clauses,◀ and samples in ▶Appendices G and H:◀ G–2[(A)], G–3[(A)], G–4[(A)], ▶G–5(A)–(C),◀G–10(A)–(E), ▶G–14(A)– (E), G–15(A)–(D), G–16(A)-(D)◀ G–17(A)–(D), G–18(A) (except as permitted pursuant to § 226.7(b)(2)), G–18(B)–(C), G–19, G–20, [and] G–21▶, G–22(A)–(B), G–23(A)–(B), G–24(A) (except as permitted pursuant to § 226.7(a)(2)), G–25, and G–26; and H–4(B) through H–4(L), H–8(A)–(B), H–9, H–17(A) through (D), H–19(A)–(I), and H–20 through H–22◀. The rearrangement of the model forms and clauses may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms and clauses. Creditors making revisions with that effect will lose their protection from civil liability. Except as otherwise specifically required, acceptable changes include, for example:

i. Using the first person, instead of the second person, in referring to the borrower.

ii. Using "borrower" and "creditor" instead of pronouns.

iii. Rearranging the sequences of the disclosures.

iv. Not using bold type for headings.

v. Incorporating certain state "plain English" requirements.

vi. Deleting inapplicable disclosures by whiting out, blocking out, filling in "N/A" (not applicable) or "0," crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multipurpose standard forms ▶for transactions not secured by real property or a dwelling◀.)

[vii. Using a vertical, rather than a horizontal, format for the boxes in the closed-end disclosures.]

Appendix G—Open-End Model Forms and Clauses

* * * * *

4. 【*Models G–5 through G–9.*】 ▶*Model Form G–5(A) and Samples G–5(B) and G–5(C).* i. A creditor satisfies § 226.15(b)(3) if it provides the Model Form G–5(A), or a substantially similar notice, which is properly completed with the disclosures required by § 226.15(b)(3).

ii. Sample G–5(B) provides guidance where a creditor is providing the rescission notice for opening of a HELOC account where the credit line is being secured by the consumer's home and the full credit line is rescindable. In this situation, a creditor may use Sample G–5(B) to meet the content and format requirements for the rescission notice set forth in § 226.15(b) and Model Form G–5(A).

iii. Sample G–5(C) provides guidance where a creditor is providing the rescission notice for a credit limit increase on the HELOC account. In this situation, a creditor may use proposed Sample G–5(C) to meet the content and format requirements for the rescission notice set forth in § 226.15(b) and Model Form G–5(A).

iv. Samples G–5(B) and G–5(C) contain the following optional disclosures set forth in § 226.15(b): (1) A disclosure about joint owners; (2) an acknowledgment of receipt of the notice; (3) the consumer's name and property address pre-printed on the form; (4) the account number on the form; and (5) a fax number that may be used by the consumer to exercise his or her rescission right. A creditor may delete these optional disclosures from Samples G–5(B) and G–5(C) and still retain the safe harbor from liability provided by these forms.

v. Although creditors are not required to use a certain paper size in disclosing the rescission notice required under § 226.15(b), Samples G–5(B) and G–5(C) are each designed to be printed on an 8½ x 11 inch sheet of paper. In addition, the following formatting techniques were used in presenting the information in the sample notices to ensure that the information is readable:

A. A readable font style and font size (10-point Arial font style).

B. Sufficient spacing between lines of the text.

C. Adequate spacing between paragraphs when several pieces of information were included in the same row of the table, as appropriate.

D. Standard spacing between words and characters. In other words, the text was not compressed to appear smaller than 10-point type.

E. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text.

F. Sufficient contrast between the text and the background. Generally, black text was used on white paper.

vi. While the regulation does not require creditors to use the above formatting techniques in presenting information in the notice (except for the 10-point font requirement), creditors are encouraged to consider these techniques when deciding how to disclose information in the notice, to ensure that the information is presented in a readable format.

vii. Creditors may use color, shading and similar graphic techniques with respect to the notice, so long as the notice remains substantially similar to the model and sample forms in Appendix G. ◀[These models set out notices of the right to rescind that would be used at different times in an open-end plan. The last paragraph of each of the rescission model forms contains a blank for the date by which the consumer's notice of cancellation must be sent or delivered. A parenthetical is included to address the situation in which the consumer's right to rescind the transaction exists beyond 3 business days following the date of the transaction, for example, when the notice or material disclosures are delivered late or when the date of the transaction in paragraph 1 of the notice is an estimate. The language of the parenthetical is not optional. See the commentary to section 226.2(a)(25) regarding the specificity of the security interest disclosure for model form G–7.】

* * * * *

Appendix H—Closed-End Model Forms and Clauses

1. *Models H–1 and H–2.* Creditors may make several types of changes to closed-end model forms H–1 (credit sale) and H–2 (loan) and still be deemed to be in compliance with the regulation, provided that the required disclosures are made clearly and conspicuously. Permissible changes include the addition of the information permitted by 【footnote 37 to】 section 226.17 and "directly related" information as set forth in the commentary to section 226.17(a).

The creditor may also delete, or on multi-purpose forms, indicate inapplicable disclosures, such as:

- The itemization of the amount financed option (See sample【s】 H–12【 through H–15】.)
- The credit 【life and disability】 insurance▶ or debt cancellation or debt suspension coverage◀ disclosures (See ▶model forms and◀ samples H-【11】▶17(A), (B), (C), and (D).)
- The property insurance disclosures (See ▶model clause H–18, and ◀samples H–10 through H–12【, and H–14】.)
- The "filing fees" and "nonfiling insurance" disclosures (See samples H–11 and H–12.)

• The prepayment penalty or rebate disclosures (See sample[s] H–12 [and H–14].)

• The total sale price (See samples H–11 [through] ►and◄ H–[15]►12◄.) Other permissible changes include:

• Adding the creditor's address or telephone number. (See the commentary to § 226.18(a).)

• Combining required terms where several numerical disclosures are the same, for instance, if the "total of payments" equals the "total sale price." (See the commentary to § 226.18.)

• Rearranging the sequence or location of the disclosures—for instance, by placing the descriptive phrases outside the boxes containing the corresponding disclosures, or by grouping the descriptors together as a glossary of terms in a separate section of the segregated disclosures; by placing the payment schedule at the top of the form; or by changing the order of the disclosures in the boxes, including the annual percentage rate and finance charge boxes.

• Using brackets, instead of checkboxes, to indicate inapplicable disclosures.

• Using a line for the consumer to initial, rather than a checkbox, to indicate an election to receive an itemization of the amount financed.

• Deleting captions for disclosures.

• Using a symbol, such as an asterisk, for estimated disclosures, instead of an "e."

• Adding a signature line to the insurance disclosures to reflect joint policies.

• Separately itemizing the filing fees.

• Revising the late charge disclosure in accordance with the commentary to § 226.18(1).

* * * * *

3. *Models H–4►(A)◄[through]►, H–4(C), H–4(H), H–5,◄ H–7►, H–16, H–18, and H–20 through H–23◄.* The model clauses are not included in the model forms although they are mandatory for certain transactions. Creditors using the model clauses when applicable to a transaction are deemed to be in compliance with the regulation with regard to that disclosure.

* * * * *

11. *Models H–8►(A)◄ and H–9 ►and Sample H–8(B)◄.* ► Model Forms H–8(A) and H–9◄ [These models] contain the rescission notices for a typical closed-end transaction and a [refinancing]►new advance of money with the same creditor◄, respectively.

►i. These model forms illustrate, in the tabular format, the disclosures required generally by § 226.23(b).

ii. A creditor satisfies § 226.23(b)(3) if it provides the appropriate model form (H–8(A) or H–9), or a substantially similar notice, which is properly completed with the disclosures required by § 226.23(b)(3).

iii. Sample H–8(B) contains the following optional disclosures set forth in § 226.23(b): (1) A disclosure about joint owners; (2) an acknowledgment of receipt of the notice; (3) the consumer's name and property address pre-printed on the form; (4) the loan number on the form; and (5) a fax number that may be used by the consumer to exercise his or her rescission right. A creditor may delete these optional disclosures from Sample H–8(B) and still retain the safe harbor from liability provided by this form.

iv. Although creditors are not required to use a certain paper size in disclosing the rescission notice under § 226.23(b), Model Forms H–8(A) and H–9 and Sample H–8(B) are designed to be printed on an 8½ × 11 sheet of paper. In addition, the following formatting techniques were used in presenting the information in the model forms and sample to ensure that the information is readable:

A. A readable font style and font size (10-point Arial font style);

B. Sufficient spacing between lines of the text;

C. Adequate spacing between paragraphs when several pieces of information were included in the same row of the table, as appropriate.

D. Standard spacing between words and characters. In other words, the text was not compressed to appear smaller than 10-point type;

E. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text;

F. Sufficient contrast between the text and the background. Generally, black text was used on white paper.

v. While the regulation does not require creditors to use the above formatting techniques in presenting information in the tabular format (except for the 10-point minimum font requirement), creditors are encouraged to consider these techniques when deciding how to disclose information in the notice to ensure that the information is presented in a readable format.

vii. Creditors may use color, shading and similar graphic techniques with respect to the notice, so long as the notice remains substantially similar to the model and sample forms in Appendix H.◄ [The last paragraph of each model form contains a blank for the date by which the consumer's notice of cancellation must be sent or delivered. A parenthetical is included to address the situation in which the consumer's right to rescind the transaction exists beyond 3 business days following the date of the transaction, for example, where the notice or material disclosures are delivered late or where the date of the transaction in paragraph 1 of the notice is an estimate. The language of the parenthetical is not optional. See the commentary to section 226.2(a)(25) regarding the specificity of the security interest disclosure for model form H–9. The prior version of model form H–9 is substantially similar to the current version and creditors may continue to use it, as appropriate. Creditors are encouraged, however, to use the current version when reordering or reprinting forms.]

12. *Sample forms.* [The sample forms]►Samples◄ [(]►H–4(D) through H–(F), H4(I) and H–4(J), H–8(B),◄H–10 through H–[15]►12, H–17(B) through (D), and H–19(D) through (I)◄[)] serve a different purpose than the model forms► and model clauses◄. The samples illustrate various ways of adapting the model forms to the individual transactions described in the commentary to appendix H. The deletions and rearrangements shown relate only to the specific transactions described. As a result, the samples do not provide the general protection from civil liability provided by the model forms and clauses.

* * * * *

Appendix K to Part 226—[Total Annual Loan Cost Rate Computations for] Reverse Mortgage [Transactions] ►Model Forms and Clauses◄

►1. *Permissible changes.* i. Although use of the model forms is not required, creditors using them properly will be deemed to be in compliance with the regulation. Creditors may make certain types of changes to the model forms and still be deemed to be in compliance with the regulation, provided that the required disclosures are made clearly and conspicuously. The model forms aggregate disclosures into groups under specific headings. Changes may not include rearranging the sequence of disclosures, for instance, by rearranging which disclosures are provided under each heading or by rearranging the sequence of the headings and grouping of disclosures. Changes to the model forms may not be so extensive as to affect the substance or clarity of the forms. Creditors making revisions with that effect will lose their protection from civil liability. Acceptable changes include, for example:

A. Using the first person, instead of the second person, in referring to the borrower

B. Using "borrower" and "creditor" instead of pronouns

C. Incorporating certain state "plain English" requirements

D. Deleting inapplicable disclosures by whiting out, blocking out, filling in "N/A" (not applicable) or "0," crossing out, leaving blanks, checking a box for applicable items, or circling applicable items.

ii. Although creditors are not required to use a certain paper size in disclosing the § 226.33 disclosures, samples K–4, K–5, and K–6 are designed to be printed on three 8½ x 11 inch sheets of paper. A creditor may use larger sheets of paper, such as 8½ x 14 inch sheets of paper, or may use multiple pages. If the disclosures are provided on two sides of a single sheet of paper, the creditor must include a reference or references, such as "SEE BACK OF PAGE" at the bottom of each page indicating that the disclosures continue onto the back of the page. If the disclosures are on two or more pages, a creditor may not include any intervening information between portions of the disclosure. In addition, the following formatting techniques were used in presenting the information in the sample tables to ensure that the information is readable:

A. A readable font style and font size (10-point Ariel font style for body text, except for annual percentage rates shown in 16-point type).

B. Sufficient spacing between lines of the text.

C. Standard spacing between words and characters. In other words, the body text was not compressed to appear smaller than the 10-point type size.

D. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text.

E. Sufficient contrast between the text and the background. Generally, black text was used on white paper.

iii. The Board is not requiring creditors to use the above formatting techniques in presenting information in the tabular format (except for the 10-point and 16-point minimum font requirements); however, the Board encourages creditors to consider these techniques when disclosing information in the table to ensure that the information is presented in a readable format.

2. *Models K–1 through K–3.* i. These model forms illustrate, in the tabular format, the disclosures required generally under § 226.33(c) and (d) for reverse mortgages. Creditors can use model K–1 for early open-end reverse mortgages disclosures required by § 226.33(d)(1); model K–2 for account-opening open-end reverse mortgage disclosures; and model K–3 for closed-end reverse mortgages.

ii. Except as otherwise permitted, disclosures must be substantially similar in sequence and format to model forms K–1 through K–3, as applicable.

3. *Sample forms.* Samples K–4 through K–6 serve a different purpose than the model forms and model clauses. The samples illustrate various ways of adapting the model forms to the individual transactions described in the commentary to appendix K. The deletions and rearrangements shown relate only to the specific transactions described. As a result, the samples do not provide the general protection from civil liability provided by the model forms and clauses.

4. *Sample K–4.* This sample illustrates the early disclosures under § 226.33 for an open-end variable-rate reverse mortgage. The appraised property value is $275,000, and the age of the youngest consumer is 82. The consumer has not yet chosen the type of payments to receive from the creditor. Under the creditor's reverse mortgage the consumer may receive a line of credit, and the maximum draw on the line of credit that the consumer could take at closing is $186,974. The variable APR is 2.93%. There are no transactions requirements or early termination fee and therefore they are not shown. The consumer's liability is limited to the net proceeds of the sale of the home, and the costs associated with the sale are assumed to be 7%.

5. *Sample K–5.* This sample illustrates the account-opening disclosures under § 226.33 for an open-end variable-rate reverse mortgage. It corresponds to the early disclosure Sample K–4, and illustrates the situation where the consumer has chosen to receive an initial advance of $12,000, a line of credit of $15,000, and a monthly payment amount of $1,287.

6. *Sample K–6.* This sample illustrates the closed-end reverse mortgage disclosures. The appraised property value is $120,000 and the age of the youngest borrower is 62. The consumer may only receive funds in the form of an initial advance at closing at $55,242. The loan has a fixed simple interest rate of 5.56%. There are no applicable fees other than those itemized in the disclosure and therefore the disclosure regarding other fees is not shown. The consumer's liability is limited to the net proceeds of the sale of the home, and the costs associated with the sale are assumed to be 7%.

7. *Model K–7.* Model Clause K–7 is not included in the model forms although it is mandatory for certain transactions. Creditors using the model clause when applicable to a transaction are deemed to be in compliance with the regulation with regard to that disclosure. Model Clause K–7 illustrates, in the tabular format, the disclosures required under § 226.33(c)(8)(v) regarding shared-equity or shared-appreciation disclosures applicable to reverse mortgages subject to § 226.33.◀

[1. *General.* The calculation of total annual loan cost rates under appendix K is based on the principles set forth and the estimation or "iteration" procedure used to compute annual percentage rates under appendix J. Rather than restate this iteration process in full, the regulation cross-references the procedures found in appendix J. In other aspects the appendix reflects the special nature of reverse mortgage transactions. Special definitions and instructions are included where appropriate.

(b) Instructions and equations for the total annual loan cost rate.

(b)(5) Number of unit-periods between two given dates.

1. *Assumption as to when transaction begins.* The computation of the total annual loan cost rate is based on the assumption that the reverse mortgage transaction begins on the first day of the month in which consummation is estimated to occur. Therefore, fractional unit-periods (used under appendix J for calculating annual percentage rates) are not used.

(b)(9) Assumption for discretionary cash advances.

1. *Amount of credit.* Creditors should compute the total annual loan cost rates for transactions involving discretionary cash advances by assuming that 50 percent of the initial amount of the credit available under the transaction is advanced at closing or, in an open-end transaction, when the consumer becomes obligated under the plan. (For the purposes of this assumption, the initial amount of the credit is the principal loan amount less any costs to the consumer under section 226.33(c)(1).)

(b)(10) Assumption for variable-rate reverse mortgages.

1. *Initial discount or premium rate.* Where a variable-rate reverse mortgage transaction includes an initial discount or premium rate, the creditor should apply the same rules for calculating the total annual loan cost rate as are applied when calculating the annual percentage rate for a loan with an initial discount or premium rate (see the commentary to § 226.17(c)).

(d) Reverse mortgage model form and sample form.

(d)(2) Sample form.

1. *General.* The "clear and conspicuous" standard for reverse mortgage disclosures does not require disclosures to be printed in any particular type size. Disclosures may be made on more than one page, and use both the front and the reverse sides, as long as the pages constitute an integrated document and the table disclosing the total annual loan cost rates is on a single page.]

Appendix L—▶Reserved◀[Assumed Loan Periods for Computations of Total Annual Loan Cost Rates

1. *General.* The life expectancy figures used in appendix L are those found in the U.S. Decennial Life Tables for women, as rounded to the nearest whole year and as published by the U.S. Department of Health and Human Services. The figures contained in appendix L must be used by creditors for all consumers (men and women). Appendix L will be revised periodically by the Board to incorporate revisions to the figures made in the Decennial Tables.]

By order of the Board of Governors of the Federal Reserve System, August 16, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

Note: The following attachments A and B will not appear in the Code of Federal Regulations.

BILLING CODE P

Attachment A

FEDERAL RESERVE BOARD CONSUMER PROTECTION RESOURCES

Key Questions to Ask about Reverse Mortgage Loans

When you are shopping for a reverse mortgage loan, consider the questions below. Ask your lender about other loan products, such as a traditional home equity loan or home equity line of credit. For more information, go to: www.frb.gov.

1) What is a Reverse Mortgage Loan?

A reverse mortgage loan is available to seniors (usually age 62 and older) who own all or almost all of the equity in their home. This loan allows you to exchange equity in your home for cash. With a reverse mortgage loan, you typically don't pay back the loan for as long as you live in your home. Instead, the loan must be repaid in full when the last living borrower dies, sells the home, or moves out of the home for 12 months or more. Repaying the loan in full includes the amount of the original loan plus all interest and any other fees and charges. Most borrowers (or their heirs) repay a reverse mortgage by selling the home.

2) How is a reverse mortgage loan different from a traditional mortgage?

- **Traditional mortgages** are loans generally used to buy a home or to borrow against your home equity for bills or other expenses. When you take out a traditional mortgage, typically the lender owns most of the equity in your home. As you pay back the loan over time (usually through monthly payments), you get that equity back from the lender. Once the traditional mortgage is paid off, you own all the equity in your home—the lender owns nothing.
- With a **reverse mortgage loan,** you already own all or most of the equity in your home, and you exchange this equity for cash from a lender. Because you do not pay back this money gradually over time, you do not earn equity back from the lender. Instead, the equity you own decreases and the amount you owe increases as interest and other fees and charges are added to the amount of the original loan.

3) Is a reverse mortgage loan right for me?

The advantage of a reverse mortgage is that you can exchange your home equity for cash and do not have to make monthly payments. **But reverse mortgages have risks:**

- ***Loan amount increases over time***
  The amount you owe increases every month. The younger you are when you take out a reverse mortgage, the more time there will be for the interest to grow and the more you will owe.
- ***Less cushion for emergencies***
  By taking out a reverse mortgage now, you will have less home equity later when you may need it more, for example, to pay for future emergencies, health care needs, home repairs, or everyday living expenses. If you are not facing a financial emergency now, consider postponing taking out a reverse mortgage.
- ***Costs more than other loan options***
  Reverse mortgages are generally more expensive than other home loans, so consider other options before taking a reverse mortgage. Reverse mortgages may also have tax consequences or may affect your eligibility for federal or state assistance. Talk with a HUD-approved reverse mortgage counselor or financial advisor to learn more.

4) What fees and charges are added to a reverse mortgage loan?

Fees and charges can vary in amount and type from one reverse mortgage loan to another. Most borrowers choose to have these costs added to their loan balance. If you choose to add these costs to your loan balance, you will be charged interest on these costs each month in addition to the interest charged on the cash you receive. Reverse mortgage loan fees and charges typically include:

- **Closing costs**, which are charged once, at closing
- **Reverse mortgage insurance premium**, which is charged in two parts: once at closing and each month as a percent of your outstanding loan balance
- **Interest**, which is charged on your outstanding loan balance each month
- **Servicing fee**, which is charged each month.

5) What if my lender wants me to use money from my reverse mortgage to buy an annuity or make another investment?

Under federal law, you cannot be required to use your reverse mortgage money to purchase any other financial or insurance product (such as an annuity, long-term care insurance, or life insurance). If another product is offered to you, make sure you understand: (1) how the product works and what its benefits are, (2) how much it costs, (3) whether you need it, and (4) how much money the person selling the product makes if you purchase it. Talk with a HUD-approved reverse mortgage counselor or financial advisor before you decide.

6) Does the lender take the title to my home while I have a reverse mortgage?

No. You continue to own your home while you have a reverse mortgage loan. This means that you must still pay for property taxes, insurance, and repairs.

7) Can I lose my home while I have a reverse mortgage?

Yes. You could lose your home if you do not pay for property taxes, insurance, and repairs. For example, if you don't pay your taxes, the lender could demand that you repay the loan in full. You may have to sell your home to repay the loan. Or the lender could take your home through foreclosure. Also, if you don't live in your home for 12 straight months or more (for example, if you are in the hospital or a nursing home), the lender could demand that you repay the loan in full, and you may have to sell your home to repay the loan.

8) What happens at the end of the loan? What if I owe more than my home is worth when the loan comes due?

A reverse mortgage loan is usually repaid by selling the home. If the money earned through selling the home isn't enough to repay the reverse mortgage, almost all lenders will absorb the difference. These lenders will not be able to sue you or your heirs for more money. If the reverse mortgage is insured by the federal government, the government will absorb the difference instead of the lender. However, if you or your heirs want to keep your home, the loan must be repaid in full. Ask your lender if this applies to your loan.

9) What happens if there is money left over after the home is sold?

Almost all reverse mortgage loans let the homeowner (or the homeowner's heirs) keep any money left over after the loan is repaid in full. Ask your lender if this applies to your loan.

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Attachment B

FEDERAL RESERVE BOARD CONSUMER PROTECTION RESOURCES

Key Questions to Ask About Your Mortgage

When you are shopping for a loan, ask each lender the questions below. Some loans have risky features that could make it difficult for you to make payments in the future. Make sure you understand the terms of your loan. If you are not comfortable with the risks, ask your lender about other loan products. **The only way to make sure you get the best possible loan terms is to talk to several lenders.**

Shop. Compare. Negotiate.

You cannot be charged a fee, other than a credit history fee, until you get disclosures. If you do not want the loan, you have a right to a fee refund, except for a credit history fee, for three days after you get the disclosures.

For more information about risky loan features, read *Shop Wisely: Understanding Your Mortgage Choices*, available at: www.federalreserve.gov.

1	**Can my interest rate increase?** If you have an adjustable rate mortgage (ARM), your interest rate can go up or down after a short period. This means that your monthly payments could increase.
2	**Can my monthly payment increase?** With some loans, your monthly payment could increase after a period of time, often by hundreds of dollars. This increase could be because you have a lower introductory interest rate, your property taxes or insurance premiums increase, or because in the beginning your monthly payment only covers the interest on the loan, and not the principal owed.
3	**Will my monthly payments reduce my loan balance?** Some loans let you pay only the interest on your loan each month. These payments do not pay down the amount you borrowed. As a result, if you have this type of loan, you may not build any equity in your home.
4	**Even if I make my monthly payments, can my loan balance increase?** Some loans let you choose to pay even less than the interest owed each month. The unpaid interest is added to your loan balance and increases the total amount that you owe. This could cause you to lose equity in your home over time.
5	**Could I owe a prepayment penalty?** Some loans charge you a large fee if you pay off your loan, refinance it, or sell your home within the first few years of the loan. This penalty fee could be thousands of dollars.
6	**Will I owe a balloon payment?** Some loans require a very large payment at the end of the loan—sometimes tens of thousands of dollars. If interest rates go up or if the value of your property drops, you may not be able to refinance your loan before you have to make this large payment.
7	**Will I have to document my employment, income, and assets to get this loan?** Sometimes a lender will make a loan without requiring you to show that you are employed and have the income or assets to repay the loan. These no-documentation ("no-doc") or low-documentation ("low-doc") loans usually have higher interest rates or higher fees than other loans.

[FR Doc. 2010–20667 Filed 9–23–10; 8:45 am]

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Friday,
September 24, 2010

Book 2 of 2 Books
Pages 58789–59056

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—April Through June 2010; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare Medicaid Services

[CMS–9060–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—April Through June 2010

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from April through June 2010, relating to the Medicare and Medicaid programs. This notice provides information on national coverage determinations (NCDs) affecting specific medical and health care services under Medicare. Additionally, this notice identifies certain devices with investigational device exemption (IDE) numbers approved by the Food and Drug Administration (FDA) that potentially may be covered under Medicare. This notice also includes listings of all approval numbers from the Office of Management and Budget for collections of information in CMS regulations and a list of Medicare-approved carotid stent facilities. Included in this notice is a list of the American College of Cardiology's National Cardiovascular Data registry sites, active CMS coverage-related guidance documents, and special one-time notices regarding national coverage provisions. Also included in this notice is a list of National Oncologic Positron Emissions Tomography Registry sites, a list of Medicare-approved ventricular assist device (destination therapy) facilities, a list of Medicare-approved lung volume reduction surgery facilities, a list of Medicare-approved clinical trials for fluorodeoxyglucose positron emissions tomogrogphy for dementia, and a list of Medicare-approved bariatric surgery facilities.

Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, and to foster more open and transparent collaboration efforts, we are also including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this 3-month time frame.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may need specific information and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing contact persons to answer general questions concerning these items. Copies are not available through the contact persons. (See Section III of this notice for how to obtain listed material.)

Questions concerning CMS manual instructions in Addendum III may be addressed to Ismael Torres, Office of Strategic Operations and Regulatory Affairs, Centers for Medicare & Medicaid Services, C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–1864.

Questions concerning regulation documents published in the **Federal Register** in Addendum IV may be addressed to Terri Plumb, Office of Strategic Operations and Regulatory Affairs, Centers for Medicare & Medicaid Services, C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–4481.

Questions concerning Medicare NCDs in Addendum V may be addressed to Patricia Brocato-Simons, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–0261.

Questions concerning FDA-approved Category B IDE numbers listed in Addendum VI may be addressed to John Manlove, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–13–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6877.

Questions concerning approval numbers for collections of information in Addendum VII may be addressed to Melissa Musotto, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Centers for Medicare & Medicaid Services, C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6962.

Questions concerning Medicare-approved carotid stent facilities in Addendum VIII may be addressed to Sarah J. McClain, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–2994.

Questions concerning Medicare's recognition of the American College of Cardiology-National Cardiovascular Data Registry sites in Addendum IX may be addressed to JoAnna Baldwin, MS, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–7205.

Questions concerning Medicare's active coverage-related guidance documents in Addendum X may be addressed to Beverly Lofton, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–7136.

Questions concerning one-time notices regarding national coverage provisions in Addendum XI may be addressed to Beverly Lofton, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–7136.

Questions concerning National Oncologic Positron Emission Tomography Registry sites in Addendum XII may be addressed to Stuart Caplan, RN, MAS, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–8564.

Questions concerning Medicare-approved ventricular assist device (destination therapy) facilities in Addendum XIII may be addressed to JoAnna Baldwin, MS, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–7205.

Questions concerning Medicare-approved lung volume reduction surgery facilities listed in Addendum XIV may be addressed to JoAnna Baldwin, MS, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–7205.

Questions concerning Medicare-approved bariatric surgery facilities listed in Addendum XV may be addressed to Kate Tillman, RN, MA, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–9252.

Questions concerning fluorodeoxyglucose positron emission tomography for dementia trials listed in Addendum XVI may be addressed to Stuart Caplan, RN, MAS, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–8564.

Questions concerning all other information may be addressed to Annette Brewer, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group, Centers for Medicare & Medicaid Services, C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6580.

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs. These programs pay for health care and related services for 39 million Medicare beneficiaries and 35 million Medicaid recipients. Administration of the two programs involves the following: (1) Furnishing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public; and (2) maintaining effective communications with regional offices, State governments, State Medicaid agencies, State survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act). We also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, and to foster more open and transparent collaboration, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the respective 3-month timeframe.

II. How To Use the Addenda

This notice is organized so that a reader may review the subjects of manual issuances, memoranda, substantive and interpretive regulations, national coverage determinations (NCD), and FDA-approved investigational device exemptions (IDE) published during the subject quarter to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) published in 1988, and the notice published March 31, 1993 (58 FR 16837). Those desiring information on the Medicare NCD Manual (NCDM, formerly the Medicare Coverage Issues Manual (CIM)) may wish to review the August 21, 1989, publication (54 FR 34555). Those interested in the revised process used in making NCDs under the Medicare program may review the September 26, 2003, publication (68 FR 55634).

To aid the reader, we have organized and divided this current listing into 11 addenda:

- Addendum I lists the publication dates of the most recent quarterly listings of program issuances.
- Addendum II identifies previous **Federal Register** documents that contain a description of all previously published CMS Medicare and Medicaid manuals and memoranda.
- Addendum III lists a unique CMS transmittal number for each instruction in our manuals or Program Memoranda and its subject matter. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manuals.
- Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the following:

++ Date published;

++ **Federal Register** citation;

++ Parts of the Code of Federal Regulations (CFR) that have changed (if applicable);

++ Agency file code number; and

++ Title of the regulation.

- Addendum V includes completed NCDs, or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCDM in which the decision appears, the title, the date the publication was issued, and the effective date of the decision.
- Addendum VI includes listings of the FDA-approved IDE categorizations, using the IDE numbers the FDA assigns. The listings are organized according to the categories to which the device numbers are assigned (that is, Category A or Category B), and identified by the IDE number.
- Addendum VII includes listings of all approval numbers from the Office of Management and Budget (OMB) for collections of information in CMS regulations in title 42; title 45, subchapter C; and title 20 of the CFR.
- Addendum VIII includes listings of Medicare-approved carotid stent facilities. All facilities listed meet CMS standards for performing carotid artery stenting for high risk patients.
- Addendum IX includes a list of the American College of Cardiology's National Cardiovascular Data registry sites. We cover implantable cardioverter defibrillators (ICDs) for certain indications, as long as information about the procedures is reported to a central registry.
- Addendum X includes a list of active CMS guidance documents. As required by section 731 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173, enacted on December 8, 2003), we will begin listing the current versions of our guidance documents in each quarterly listings notice.
- Addendum XI includes a list of special one-time notices regarding national coverage provisions. We are publishing a list of issues that require public notification, such as a particular clinical trial or research study that qualifies for Medicare coverage.
- Addendum XII includes a listing of National Oncologic Positron Emission Tomography Registry (NOPR) sites. We cover positron emission tomography (PET) scans for particular oncologic indications when they are performed in a facility that participates in the NOPR.
- Addendum XIII includes a listing of Medicare-approved facitilites that receive coverage for ventricular assist devices used as destination therapy. All facilities were required to meet our standards in order to receive coverage for ventricular assist devices implanted as destination therapy.
- Addendum XIV includes a listing of Medicare-approved facilities that are eligible to receive coverage for lung volume reduction surgery. Until May 17, 2007, facilities that participated in the National Emphysema Treatment Trial are also eligible to receive coverage.

• Addendum XV includes a listing of Medicare-approved facilities that meet minimum standards for facilities modeled in part on professional society statements on competency. All facilities must meet our standards in order to receive coverage for bariatric surgery procedures.

• Addendum XVI includes a listing of Medicare-approved clinical trials for fluorodeoxyglucose positron emission tomography (FDG–PET) for dementia and neurodegenerative diseases.

III. How To Obtain Listed Material

A. Manuals

Those wishing to subscribe to program manuals should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, ATTN: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 512–1800, Fax number (202) 512–2250 (for credit card orders); or

National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell. Additionally, most manuals are available at the following Internet address: *http://cms.hhs.gov/manuals/default.asp.*

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address given above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is also available on 24x microfiche and as an online database through *GPO Access.* The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is *http://www.gpoaccess.gov/fr/index.html,* by using local WAIS client software, or by telnet to *swais.gpoaccess.gov,* then log in as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then log in as guest (no password required).

C. Rulings

We publish rulings on an infrequent basis. CMS Rulings are decisions of the Administrator that serve as precedent final opinions and orders and statements of policy and interpretation. CMS Rulings provide clarification and interpretation of complex or ambiguous provisions of the law or regulations relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, private health insurance, and related matters. Interested individuals can obtain copies from the nearest CMS Regional Office or review them at the nearest regional depository library. On occasion, we publish rulings in the **Federal Register**. Rulings, beginning with those released in 1995, are available online, through the CMS Home Page. The Internet address is *http://www.cms.hhs.gov/rulings.*

D. CMS' Compact Disk-Read Only Memory (CD–ROM)

Our laws, regulations, and manuals are also available on CD–ROM and may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is on the CD–ROM disk:

• Titles XI, XVIII, and XIX of the Act.

• CMS-related regulations.

• CMS manuals and monthly revisions.

• CMS program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 2005. (Updated titles of the Social Security Laws are available on the Internet at *http://www.ssa.gov/OP_Home/ssact/comp-toc.htm.*) The remaining portions of CD–ROM are updated on a monthly basis.

Because of complaints about the unreadability of the Appendices (Interpretive Guidelines) in the State Operations Manual (SOM), as of March 1995, we deleted these appendices from CD–ROM. We intend to re-visit this issue in the near future and, with the aid of newer technology, we may again be able to include the appendices on CD–ROM.

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

IV. How To Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL.

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most Federal Government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library.

For each CMS publication listed in Addendum III, CMS publication and transmittal numbers are shown. To help FDLs locate the materials, use the CMS publication and transmittal numbers. For example, to find the Medicare National Coverage Determination publication titled "New Medicare Secondary Payer Insurer Type Codes Valid Insurance Type Codes," use CMS–Pub. 100–03, Transmittal No. 74.

Authority: (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: September 16, 2010.

Jacquelyn Y. White,

Director, Office of Strategic Operations and Regulatory Affairs.

Addendum I

This addendum lists the publication dates of the most recent quarterly listings of program issuances.

June 27, 2008 (73 FR 36596)
September 26, 2008 (73 FR 55902)
December 30, 2008 (73 FR 79982)
March 27, 2009 (74 FR 13516)
June 26, 2009 (74 FR 30689)
September 25, 2009 (74 FR 49076)
December 18, 2009 (74 FR 67310)
March 26, 2010 (75 FR 14906)
June 28, 2010 (75 FR 36786)

Addendum II: Description of Manuals, Memoranda, and CMS Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published in the June 9, 1988 **Federal Register** (53 FR 21730) and supplemented in the September 22, 1988 **Federal Register** (53 FR 36891) and the December 16, 1988 **Federal Register** (53 FR 50577). Also, a complete description of the former CIM (now the NCDM) was published in the August 21, 1989 **Federal Register** (54 FR 34555). A brief description of the various Medicaid manuals and memoranda that we maintain was published in the October 16, 1992 **Federal Register** (57 FR 47468).

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ADDENDUM III: Medicare and Medicaid Manual Instructions April Through June 2010

Transmittal No.	Manual/Subject/Publication Number

Medicare General Information (CMS-Pub. 100-01)

63	October 2010 Update to the CMS Standard File for Reason Codes for the Fiscal Intermediary Shared System (FISS)

Medicare Benefit Policy (CMS-Pub. 100-02)

122	Claims Submitted for Items or Services Furnished to Medicare Beneficiaries in State or Local Custody Under a Penal Authority and Examples of Application of Government Entity Exclusion. This CR Rescinds and fully replaces CR 6544.
	Examples of Application of Government Entity Exclusion
123	Determining Self-Administration of Drug or Biological
	Determining Self-Administration of Drug or Biological
124	Pulmonary Rehabilitation (PR) Services
	Pulmonary Rehabilitation (PR) Program Services Furnished on or after January 1, 2010
125	Ambulance Services - Joint Responses
	Joint Responses
126	Cardiac Rehabilitation (CR) and Intensive Cardiac Rehabilitation (ICR) Services Furnished on or after January 1, 2010

Medicare National Coverage Determination (CMS-Pub. 100-03)

74	New Medicare Secondary Payer Insurer Type Codes
	Valid Insurance Type Codes

Medicare Claims Processing (CMS-Pub. 100-04)

1940	Extension of Reasonable Cost Payment for Clinical Lab Tests Furnished by Hospitals with Fewer Than 50 Beds in Qualified Rural Areas
	Method of Payment for Clinical Laboratory Tests - Place of Service Variation
1941	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
1942	Update to the Medical Conditions List and Instructions

1943	April 2010 Update to the Ambulatory Surgical Center (ASC) Payment System
1944	Claims Submitted for Items or Services Furnished to Medicare Beneficiaries in State or Local Custody Under a Penal Authority and Examples of Application of Government Entity Exclusion. This CR rescinds and fully replaces CR6544.
1945	New Legislation to Allow Independent Laboratory Billing for the Technical Component of Physician Pathology Services for Hospital Inpatients and Outpatients
1946	Billing and Processing Claims with Unlimited Occurrence Span Codes (OSCs)
1947	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
1948	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
1949	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
1950	Claim Adjustment Reason Code (CARC), Remittance Advice Remark Code (RARC), and Medicare Remit Easy Print (MREP) Update
1951	Removal of the Provider Reporting Requirement for Total Number of Therapy Visits using Value Codes 50-53
	Reporting of Service Units With HCPCS
1952	Enhancements to Home Health (HH) Consolidated Billing
	Home Health Prospective Payment System (HH PPS) Consolidated Billing
	Responsibilities of Provider/Supplies of Services Subject to Consolidated Billing
	Home Health Consolidated Billing Edits in Medicare Systems
	Nonroutine Supply Editing
	Therapy Editing
1953	Use of 12X Type of Bill (TOB) for Billing Colorectal Screening Services
	Billing Requirements for Claims Submitted to FIs
1955	Update to the HCPCS Codes for Payment of Surgical Dressing in Indian Health Service (IHS) Providers
	Prosthetics/Orthotics and Supplies Billed to the A/B MAC
1956	Remittance Advice Coding to Identify Claims Subject to the Limitation on
	Home Health Prospective Payment System (HH PPS) Outlier Payments
	Adjustments of Episode Payment - Outlier Payments
1957	Update to the HCPCS Codes for Payment of Surgical Dressings in Indian Health Service (IHS) Providers
	Prosthetics/Orthotics and Supplies Billed to the A/B MAC
1958	Skilled Nursing Facility (SNF) Health Insurance Prospective Payment System (HIPPS) Coding Updates Effective October 1, 2010
	Billing SNF PPS Services
	Health Insurance Prospective Payment System (HIPPS) Rate Code
	SNF PPS Rate Components
	Decision Logic Used by the Pricer on Claims
1959	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
1960	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
1961	Payment for Replacement of Oxygen Equipment in Bankruptcy Situations

Payment for Replacement of Oxygen Equipment in Bankruptcy Situations
1962 Discarded Drugs and Biologicals Updates
Discarded Drugs and Biologicals
1963 Changes to the Laboratory National Coverage Determination (NCD) Edit Software for July 2010
1964 Instructions for Downloading the Medicare ZIP Code File for October 2010
1965 Appeals Revisions - AIC Requirements
Steps in the Appeals Process: Overview
Amount in Controversy Requirements
Amount in Controversy General Requirements
Principles for Determining Amount in Controversy
Aggregation of Claims to Meet the Amount in Controversy
1966 Pulmonary Rehabilitation (PR) Services
Pulmonary Rehabilitation Program Services Furnished on or after January 1, 2010
Coding Requirements for Pulmonary Rehabilitation (PR) Services Furnished on or after January 1, 2010
Claims Processing Requirements for Pulmonary Rehabilitation (PR) Services Furnished on or after January 1, 2010
Correct Place of Service (POS) Codes for PR Services on Professional Claims
Requirements for PR Services on Institutional Claims
Daily Frequency Edits for PR Claims
Edits for PR Services Exceeding 36 Sessions
1967 July Quarterly Update for 2010 Durable Medical Equipment, Prosthetics, Orthotics and Suppliers (DMEPOS) Fee Schedule
1968 July Update to the 2010 Medicare Physician Fee Schedule Database (MPFSDB)
1969 July 2010 Integrated Outpatient Code Editor (I/OCE) Specifications Version 11.2
1970 Update Form CMS- 1500 Information
Health Insurance Claim Form CMS- 1500
Items 14-33 Provider of Service or Supplier Information
Miles/Times/Units/Services (MTUS)
Methodology for Coding Number of Services, MTUS COUNT AND MTUS Indicator Fields
1971 Quarterly Update to Correct Coding Initiative (CCI) Edits, Version 16.2, Effective July 1, 2010
1972 Quarterly HCPCS Code Changes - July 2010 Update
1973 Internet Only Manual (IOM) Chapter 25 Revisions
Form Locators 1-15
Form Locators 16-30
Form Locators 31-41
Form Locator 42
Form Locators 43-81
1974 Cardiac Rehabilitation and Intensive Cardiac Rehabilitation
Physician Specialty Codes
Claims Processing Requirements for Cardiac Rehabilitation (CR) and Intensive Cardiac Rehabilitation (ICR) Services Furnished on or After January 1, 2010
Correct Place of Service (POS) Codes for CR and ICR Services on Professional Claims
Correct Place of Service (POS) Codes for CR and ICR Services on Professional Claims
Requirements for CR and ICR Services on Institutional Claims

	Frequency Edits for CR and ICR Claims
	Edits for CR Services Exceeding 36 Sessions
	Edits for ICR Services Exceeding 126 Days and 72 Sessions
	Supplier Specialty Code 31 Requirements for ICR Claims
1975	Revisions and Re-issuance of Audiology Policies
	Part B Outpatient Rehabilitation and Comprehensive Outpatient Rehabilitation Facility (CORF) Services – General
	Applicable Revenue Codes
	Line Item Date of Service Reporting
	Line Item Date of Service Reporting
	Audiology Services
1976	July 2010 Update of the Hospital Outpatient Prospective Payment System (OPPS)
	Billing for Allogeneic Stem Cell Transplants
1977	Collagen Meniscus Implant
1978	Dermal Injections for Treatment of Facial Lipodystrophy Syndrome (LDS)
	Dermal Injections for Treatment of Facial Lipodystrophy Syndrome (LDS) Policy
	Billing Instructions
	Hospital Billing Instructions
	Practitioner Billing Instructions
	Claims Processing System Editing
1979	Issued to a specific, audience not posted to Internet/Intranet due to Confidentiality Instruction
1980	July 2010 Update of the Hospital Outpatient Prospective Payment System (OPPS)
1981	Update-Inpatient Psychiatric Facilities Prospective Payment System (IPF PPS) Rate Year 2011
1982	July 2010 Integrated Outpatient Code Editor (I/OCE) Specifications Version 11.2
1983	Clarification on Use of the SNFABN and Denial Letters Form CMS-10055 Skilled Nursing Facility Advance Beneficiary Notice (SNFABN)
1984	July 2010 Update to the Ambulatory Surgical Center (ASC) Payment System
1985	Clarifications and Updates of Therapy Services Policies The Financial Limitation
1986	Guidelines to Allow Contractors to Develop and Utilize Procedures for Accepting and Processing Appeals Via Facsimile and/or Via a Secure Internet Portal/Application
	Filing a Request for Redetermination
	Time Limit for Filing a Request for Redetermination
	The Redetermination
	The Redetermination Decision
	Dismissals
	Vacating a Dismissal
	Dismissal Letters
	Model Dismissal Notices
	Medicare Redetermination Notice (For Partly or Fully Unfavorable Redeterminations)
	Medicare Redetermination Notice (For Fully Favorable Redeterminations)
	System and Processing Requirements for Use of Secure Internet Portal/Application to Support Appeals Activities
1987	Correction to the Claims Processing Internet Only Manual (IOM) to Reinstate Previous Instructions Regarding Payment Jurisdiction for Reassigned Services Payment

Jurisdiction for Services Subject to the Anti-Markup Payment Limitation
Payment Jurisdiction for Reassigned Services
Interpretations Performed Off the Premises of the IDTF

1988 Enhancements to Home Health (HH) Consolidated Billing
Home Health Prospective Payment System (HH PPS) Consolidated Billing
Responsibilities of Providers/Suppliers of Services Subject to Consolidated Billing
Home Health Consolidated Billing Edits in Medicare Systems
Nonroutine Supply Editing
Therapy Editing

1989 October Quarterly Update to 2010 Annual Update of HCPCS Codes Used for Skilled Nursing Facility (SNF) Consolidated Billing (CB) Enforcement

1990 October 2010 Quarterly Average Sales Price (ASP) Medicare Part B Drug Pricing Files and Revisions to Prior Quarterly Pricing Files

1991 July 2010 Update to the Ambulatory Surgical Center (ASC) Payment System

1992 July Update to the Medicare Physician Fee Schedule Database (MPFSDB)

Medicare Secondary Payer
(CMS-Pub. 100-05)

00 None

Medicare Financial Management
(CMS-Pub. 100-06)

167 Recovery Audit Contractors (RACs)
Adjusting the Claim
Tracking Appeals

168 Recovery Audit Contractors (RACs)
Communication with the RACs
Inputting Suppression and Exclusion Cases to the RAC Data Warehouse

169 Recovery Audit Contractors (RACs)
Providing Suppressed Cases to the RAC Data Warehouse

170 Cardiac Rehabilitation and Intensive Cardiac Rehabilitation

Medicare State Operations Manual
(CMS-Pub. 100-07)

59 Clarification of the Interpretive Guidelines for the Anesthesia Services Condition of Participation

Medicare Program Integrity
(CMS-Pub. 100-08)

334 Update to Site Verification Process
Site Verifications to Determine Operational Status
Site Verifications to Determine if a Provider or Supplier Meets or Continues to Meet the Regulatory Requirements for Their Provider or Supplier Type

335 Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
336 Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
337 Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
338 Clinical Review Judgment (CRJ)
339 Cardiac Rehabilitation and Intensive Cardiac Rehabilitation
Cardiac Rehabilitation (CR) and Intensive Cardiac Rehabilitation (ICR)
340 Issued to a specific audience, not posted to the Internet/Intranet due to Confidentiality of Instruction
341 Issued to a specific, audience not posted to Internet/Intranet due to Confidentiality Instruction

Medicare Contractor Beneficiary and Provider Communications (CMS-Pub. 100-09)

00 None

Medicare End-Stage Renal Disease Network Organizations (CMS Pub 100-14)

00 None

Medicare Managed Care (CMS-Pub. 100-16)

00 None

Medicare Business Partners Systems Security (CMS-Pub. 100-17)

00 None

Demonstrations (CMS-Pub. 100-19)

65 Clarification of Unsolicited Response and Auto Adjustment of Claims under CR 6001 for the Medicare Acute Care Episode (ACE) Demonstration

One Time Notification (CMS-Pub. 100-20)

667 Health Insurance Portability and Accountability Act (HIPAA) 005010 837 Institutional (837I) Edits and 005010 837 Professional (837P) Edits - July Version

668 HIPAA 5010/D.0 Project Receipt, Control and Balancing Second Phase
669 Guidance on Implementing System Edits for Certain Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS)
670 Allow Zoned Program Integrity Contractors (ZPICs) to Access Medicare Administrative Contractors (MACs) by ZPIC Zone
671 Implementation of a File-Based Recovery Audit Contractor (RAC) Mass Adjustment Process in VMS (This CR Rescinds and Fully Replaces CR 6549)
672 Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
673 Modification of the File-Based RAC Mass Adjustment Process in FISS (This CR Rescinds and Fully Replaces CR 6555)
674 Temporary 3 Percent Rural Add-On for the Home Health Prospective Payment System (HH PPS)
675 Customer Information Control System (CICS) Production Region Merge of the Part A Arkansas, Louisiana and Mississippi Workloads in Preparation for the J7 A/B Medicare Administrative Contractor (MAC) Implementation.
676 Payment of Oxygen Contents to Suppliers Af ter the 36th Month Rental Cap under the Medicare Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Competitive Bidding Program
677 Expansion of the Current Scope of Editing for Attending Physician Providers For Free-Standing and Provider-Based Home Health Agency (HHA) Claims Processed by Medicare Regional Home Health Intermediaries (RHHIs)
678 Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
679 Carrier and Part A and Part B Medicare Administrative Contractors (A/B MACs) Implementation of Title 42 Code of Federal Regulations (CFR) Section 424.535
680 Deactivation Letters for the Fiscal Intermediary Standard System (FISS)
681 Requirement for Submission of Shared Systems Data to the Integrated Data Repository (IDR)
682 Sending DMEPOS Medicare Summary Notices on a Monthly Schedule to all Beneficiaries in Miami-Dade, Broward and Palm Beach County Zip Codes in Florida
683 Analysis of the Expansion of the Legal Business Name (LBN), Practice Location and Special Payment Address Fields in the Viable Medicare System (VMS)
684 New Medicare Summary Notice (MSN) Message for Higher than Expected (PPS) Payments
685 Provide Mapping of Shared Systems Data to the HIPAA835 and 837 Formats
686 Change in Claims Filing Jurisdiction for Tracheo-Esophageal Voice Prosthesis Healthcare Common Procedure Coding System (HCPCS) Code
687 Additional Medicare Secondary Payer (MSP) Claims Processing Instructions for the Common Working File, Medicare Part B, and Durable Medical Equipment (DME) Shared Systems Regarding Medicare Secondary Payer Claims that Contain a Claim Adjustment Reason Code (CARC) 19, 20 or 21
688 Durable Medical Equipment National Competitive Bidding Implementation – Phase 10G: Paying for Oxygen Equipment when Grandfathered
689 Analysis and Design to Ensure That Coordination of Benefits Agreement (COBA) Trading Partners Can Accept and Process Acute Care Episodic (ACE)

	Demonstration Claims For Crossover Purposes
690	Durable Medical Equipment National Competitive Bidding Implementation – Phase 10C: Exception for Medicare Beneficiaries Previously Enrolled in a Medicare Advantage Plan
691	The Transition of a Segment of the Wisconsin Physicians Service (WPS) Legacy Workload (Formerly Processed by Mutual of Omaha) for the States of Colorado, New Mexico, Oklahoma, and Texas to the J4 A/B Medicare Administrative Contractor (MAC)
692	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
693	Instructions Regarding the Processing of Inpatient Claims for Gender/Procedure Conflict
694	Multiple Procedure Payment Reduction (MPPR) on the Technical Component (TC) of Certain Diagnostic Imaging Procedures
695	Addition of Repair Codes to the List of Healthcare Common Procedure Coding System (HCPCS) Codes Payable Under the Instructions Provided in Change Requests (CRs) 6573 and 5917
696	Requirements for Hospital Attestation and Billing of Fiscal Year 2007 and 2008 Informational Only Inpatient Claims for Medicare Advantage Beneficiaries
697	Systems Changes Necessary to Implement the Patient Protection and Affordable Care Act (PPACA) Section 6404 - Maximum Period for Submission of Medicare Claims Reduced to Not More Than 12 Months
698	Phase 2 Base System Changes for Implementation of the Next Version of the Health Insurance Portability and Accountability Act (HIPAA) – Multi Carrier System (MCS) Only
699	Implementation of the Electronic Health Record (EHR) Incentive Program for Medicare Hospitals - The American Recovery and Reinvestment Act of 2009 (ARRA)
700	Revised Payment Files for the 2010 Medicare Physician Fee Schedule Database (MPFSDB) and Retroactive Provisions under the Patient Protection and Affordable Care Act (Pub. L. 111-148) (the Affordable Care Act)
701	October Common Edits and Enhancements Module (CEM) Updates
702	Common Edits and Enhancements Module (CEM) October Release Update for Test/Production Indicator Activity and Outbound Data Scrubbing
703	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
704	Implementation of the HIPAA Version 5010 276/277 Claim Status Edit October 2010 Release
705	Version D.O Inbound National Council for Prescription Drug Programs (NCPDP) Medicare Secondary Prayer (MSP) Claims Processing
706	Extension for the Two Percent and Three Percent Add-On for the Ground Ambulance, Air Ambulance in Rural Areas and" Super Rural "Add-On
707	Health Insurance Portability and Accountability Act (HIPAA) 005010 837 Institutional (8371) Edits and 005010 837 Professional (837P) Edits–October 2010 Version
708	Issued to a specific audience, not posted to Internet/ Intranet due to Confidentiality Instruction
709	Additional Instruction for Implementation of Health Insurance Portability and

Accountability Act of 1996 (HIIPAA) Version 5010 for Transaction 835 – Health Care Claim Payment/Advice and Updated Standard Paper Remit (SPR)

710 Guidance on Implementing System Edits for Certain Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS)

711 Issued to a specific, audience not posted to Internet/Intranet due to Confidentiality of Instruction

712 One-Time Mailing of Solicitation Letter To All Physicians And Non-Physician Practitioners Who Are Currently Enrolled In Medicare But Who Do Not Have An Enrollment Record In The Provider Enrollment, Chain And Ownership System (PECOS

713 Hospital Provider Enrollment Revalidation

714 Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality Instruction

715 Analysis for FISS, CWF and NCH for Physician and Non-Physician Practitioner Specialty Codes

716 HIPAA 5010 Activity – Testing of 5010 CRs

717 Clarification of the Date of Service for Maintenance and Servicing Payments for Certain Oxygen Equipment After July 1, 2010

718 Durable Medical Equipment National Competitive Bidding Implementation – Phase 10G: Paying for Oxygen Equipment when Grandfathered

719 Reprocessing of Claims for Certain Replacement Parts, Accessories, or Supplies for Prosthetic Implants and Surgically Implanted Durable Medical Equipment (DME) with Dates of Service of October 27th, 2008 through December 31, 2009

720 Additional Healthcare Common Procedure Coding System (HCPCS) Codes Subject to Clinical Laboratory Improvement Amendments (CLIA) Edits

721 Durable Medical Equipment National Competitive Bidding Implementation-Phase 10C: Exception for Medicare Beneficiaries Previously Enrolled in Medicare Advantage Plan

722 Requirement for Submission of Shared Systems Data to the Integrated Data Repository (IDR)

723 Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality Instruction

Medicare Quality Reporting Incentive Programs
(Pub 100- 22)

01 Physician Quality Reporting Initiative (PQRI) and E-Prescribing (eRx)
Medicare
Background
Quality Reporting Incentive Programs Manual
Eligible Professionals
Professionals Eligible to Participate But Not Able to Participate
Professionals Not Eligible to Participate in the PQRI and Not Able to Qualify to Earn an Incentive Payment
Payment for Reporting
Reporting Period
Form and Manner of Reporting
Claims-based Reporting Mechanism

ADDENDUM IV: Regulation Documents Published in the Federal Register April Through June 2010

Publication Date	FR Vol. 75 Page Number	42 CFR Parts Affected	File Code	Title of Regulation
April 14, 2010	19297	**45 CFR** 146 and 148	-------------	Medical Loss Ratios; Request for Comments Regarding Section 2718 of the Public Health Service Act
April 14, 2010	19335	**45 CFR** 146 and 148	-------------	Premium Review Process; Request for Comments Regarding Section 2794 of the Public Health Service Act
April 15, 2010	19678	417,422, 423, and 480	CMS-4085-F	Medicare Program; Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs.
April 23, 2010	21175	483	CMS-2266-F	Medicare and Medicaid Programs; Waiver of Disapproval of Nurse Aide Training Program in Certain Cases.
April 23, 2010	21207	416	CMS-3217-P	Medicare Program; Ambulatory Surgical Centers, Conditions for Coverage.
April 23, 2010	21314	-------------	CMS-2300-N	Medicaid Program; Final FY 2008, Revised Preliminary FY 2009, and Preliminary FY 2010 Disproportionate Share Hospital Allotments and Final FY 2008, Revised Preliminary FY 2009, and Preliminary FY 2010 Disproportionate Share Hospital Institutions for Mental Disease Limits.
April 23, 2010	21329	-------------	CMS-2309-N	Medicaid Program; State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals: Federal Fiscal Year 2009 and Federal Fiscal Year 2010.

Publication Date	FR Vol. 75 Page Number	42 CFR Parts Affected	File Code	Title of Regulation
April 23, 2010	21337	-------------	CMS-3819-P	Medicare and Medicaid Programs; Announcement of an Application From a Hospital Requesting Waiver for Organ Procurement Service Area.
April 26, 2010	21802	-------------	CMS-1343-NC	Medicare and Medicaid Programs; Announcement of Applications From Hospitals Requesting Waiver for Organ Procurement Service Area.
April 30, 2010	23068	440	CMS-2232-F4	Medicaid Program; State Flexibility for Medicaid Benefit Packages.
April 30, 2010	23106	-------------	CMS-1424-N	Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System Payment-Update for Rate Year Beginning July 1, 2010 (RY 2011).
May 4, 2010	23852	412, 413, 440, 441, 482, 485, and 489	CMS-1498-P	Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System Changes and FY2011 Rates; Provider Agreements and Supplier Approvals; and Hospital Conditions of Participation for Rehabilitation and Respiratory Care Services; Medicaid Program: Accreditation for Providers of Inpatient Psychiatric Services.
May 5, 2010	24437	424 and 431	CMS-6010-IFC	Medicare and Medicaid Programs; Changes in Provider and Supplier Enrollment, Ordering and Referring, and Documentation Requirements; and Changes in Provider Agreements.

Publication Date	FR Vol. 75 Page Number	42 CFR Parts Affected	File Code	Title of Regulation
May 5, 2010	24450	**45 CFR-** 149	-------------	Early Retiree Reinsurance Program
May 11, 2010	26350	410, 411, 414, 415, 485, and 498	CMS-1413-CN4	Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2010; Corrections.
May 13, 2010	27122	**45 CFR-** 144,146 and 147	OCIIO-4150-IFC	Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Dependent Coverage of Children to Age 26 Under the Patient Protection and Affordable Care Act
May 26, 2010	29479	482 and 485	CMS-3227-P	Medicare and Medicaid Programs: Proposed Changes Affecting Hospital and Critical Access Hospital (CAH) Conditions of Participation (CoPs): Credentialing and Privileging of Telemedicine Physicians and Practitioners.
May 26, 2010	29555	-------------	CMS-4151-NC	Medicare Program; Medicare Coverage Gap Discount Program Model Manufacturer Agreement and Announcement of the June 1, 2010 Public Meeting.
May 28, 2010	30041	-------------	CMS-1340-N	Medicare Program; Public Meeting in Calendar Year 2010 for New Clinical Laboratory Tests Payment Determinations.
May 28, 2010	30043	-------------	CMS-7018-N	Medicare Program; Meeting of the Advisory Panel on Medicare Education.
May 28, 2010	30046	-------------	CMS-2316-N	Medicaid and CHIP Programs; Meeting of the CHIP Working Group—June 14, 2010.
May 28, 2010	30244	447 and 457	CMS-224-FC	Medicaid Program; Premiums and Cost Sharing.

Publication Date	FR Vol. 75 Page Number	42 CFR Parts Affected	File Code	Title of Regulation
June 2, 2010	30756	412 and 413	CMS-1498-CN	Medicare Program; Supplemental Proposed Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Supplemental Proposed Fiscal Year 2011 Rates; Correction.
June 2, 2010	30918	412 and 413	CMS-1498-P2	Medicare Program; Supplemental Proposed Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Supplemental Proposed Fiscal Year 2011 Rates.
June 2, 2010	31118	-------------	CMS-1406-N	Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and Fiscal Year 2010 Rates and to the Long-Term Care Hospital Prospective Payment System and Rate Year 2010 Rates: Final Fiscal Year 2010 Wage Indices and Payment Rates Implementing the Affordable Care Act.
June 10, 2010	32858	417, 422, 423, and 480	CMS-4085-CN	Medicare Program; Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs; Corrections.
June 11, 2010	33313	-------------	CMS-1576-N	Medicare and Medicaid Programs; Procedure for Hospitals Seeking To Enter Into an Agreement With a Different Organ Procurement Organization Following an 1138(a)(2) Waiver.
June 17, 2010	34538	**45 CFR-** 147	OCIIO-9991-IFC	Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act

Publication Date	FR Vol. 75 Page Number	42 CFR Parts Affected	File Code	Title of Regulation
June 17, 2010	34612	412 and 413	CMS-1498-CN2	Medicare Program; Supplemental Proposed Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Supplemental Proposed Fiscal Year 2011 Rates; Corrections.
June 17, 2010	34614	-------------	CMS-1406-CN2	Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and Fiscal Year 2010 Rates and to the Long-Term Care Hospital Prospective Payment System and Rate Year 2010 Rates: Final Fiscal Year 2010 Wage Indices and Payment Rates Implementing the Affordable Care Act; Corrections.
June 28, 2010	36610	482 and 485	CMS-3228-P	Medicare and Medicaid Programs: Changes to the Hospital and Critical Access Hospital Conditions of Participation To Ensure Visitation Rights for All Patients.
June 28, 2010	36786	-------------	CMS-9059-N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—January Through March 2010
June 28, 2010	37188	**45 CFR-** 144,146 and 147	OCIIO-9994-IFC	Patient Protection and Affordable Care Act: Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, and Patient Protections

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ADDENDUM V: National Coverage Determinations
April Through June 2010

A national coverage determination (NCD) is a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under Title XVIII of the Act, but does not include a determination of what code, if any, is assigned to a particular item or service covered under this title, or determination with respect to the amount of payment made for a particular item or service so covered. We include below all of the NCDs that were issued during the quarter covered by this notice. The entries below include information concerning completed decisions as well as sections on program and decision memoranda, which also announce pending decisions or, in some cases, explain why it was not appropriate to issue an NCD. We identify completed decisions by the section of the NCDM in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. Information on completed decisions as well as pending decisions has also been posted on the CMS Web site at http://cms.hhs.gov/coverage.

Title	NCDM Section	TN #	Issue Date	Effective Date
FDG PET for Solid Tumors and Myeloma	220.60	R120NCD	05/06/2010	04/03/2009
Collagen Meniscus Implant	150.12	R121NCD	05/28/2010	05/25/2010
Dermal Injections for Treatment of Facial Lipodystrophy Syndrome (LDS)	250.50	R122NCD	06/04/2010	03/23/2010
Magnetic Resonance Angiography	220.2 220.3	R123NCD	07/09/2010	06/03/2010

ADDENDUM VI: FDA-Approved Category B IDEs April Through June 2010

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c) devices fall into one of three classes. To assist CMS under this categorization process, the FDA assigns one of two categories to each FDA-approved IDE. Category A refers to experimental IDEs, and Category B refers to non-experimental IDEs. To obtain more information about the classes or categories, please refer to the notice published in the April 21, 1997 **Federal Register** (62 FR 19328).

The following list includes all Category B IDEs approved by FDA during the second quarter, April through June 2010.

IDE	Category
BB07621	B
BB13641	B
BB14207	B
BB14314	B
BB14321	B
BB14336	B
BB14341	B
BB14352	B
BB14386	B
G080139	B
G080208	B
G090139	B
G090163	B
G090243	B
G090274	B
G090279	B
G100001	B
G100005	B
G100010	B
G100015	B
G100037	B
G100039	B
G100049	B
G100050	B
G100053	B
G100060	B
G100062	B
G100070	B
G100075	B
G100078	B
G100084	B
G100085	B
G100086	B
G100088	B
G100091	B
G100092	B

ADDENDUM VII: Approval Numbers for Collections of Information

Below we list all approval numbers for collections of information in the referenced sections of CMS regulations in Title 42; Title 45, Subchapter C; and Title 20 of the Code of Federal Regulations, which have been approved by the Office of Management and Budget:

OMB Control Numbers	Approved CFR Sections in Title 42, Title 45, and Title 20 (Note: Sections in Title 45 are preceded by "45 CFR," and sections in Title 20 are preceded by "20 CFR")

OMB NUMBER	Approved CFR Sections
0938-0008	Part 424 Subpart C
0938-0022	413.20, 413.24, 413.106
0938-0023	424.103
0938-0025	406.28, 407.27
0938-0027	486.100 - 486.110
0938-0033	405.807
0938-0035	407.40
0938-0037	413.20, 413.24
0938-0041	408.6, 408.202
0938-0042	410.1, 410.40, 424.124, 424.601, 414.605, 414.610, 414.615, 414.620, 414.625, 424.32
0938-0045	405.711
0938-0046	405.2133
0938-0050	413.20, 413.24
0938-0062	431.151, 435.151, 435.1009, 440.220, 440.250, 442.1, 442.10 - 442.16, 442.30, 442.40, 442.42, 442.100 - 442.119, 483.400 - 483.480, 488.332, 488.400, 498.3 - 498.5
0938-0065	485.701 - 485.729
0938-0074	491.1 - 491.11
0938-0080	406.7, 406.13
0938-0086	420.200 - 420.206, 455.100 - 455.106
0938-0101	430.30
0938-0102	413.20, 413.24
0938-0107	413.20, 413.24
0938-0146	431.800 - 431.865
0938-0147	431.800 - 431.865
0938-0151	493.1 - 493.2001
0938-0155	405.2470
0938-0193	430.10 - 430.20, 440.167
0938-0202	413.17, 413.20
0938-0214	411.25, 489.2, 489.20

OMB NUMBER	Approved CFR Sections
0938-0236	413.20, 413.24
0938-0242	488.26 and 442.30
0938-0245	407.10, 407.11
0938-0246	431.800-431.865
0938-0251	406.7
0938-0266	416.1-416.150
0938-0267	485.56, 485.58, 485.60, 485.64, 485.66
0938-0269	412.116, 412.632, 413.64, 413.350, 484.245
0938-0270	405.376
0938-0272	440.180, 441.300 - 441.310
0938-0273	485.701 - 485.729
0938-0279	424.5
0938-0287	447.31
0938-0296	413.170, 413.184
0938-0301	413.20, 413.24, 415.60
0938-0302	418.22, 418.24, 418.28, 418.56, 418.58, 418.70, 418.74, 418.83, 418.96, 418.100
0938-0313	489.11, 489.20
0938-0328	482.12, 482.13, 482.21, 482.22, 482.27, 482.30, 482.41, 482.43, 482.45, 482.53, 482.56, 482.57, 482.60, 482.61, 482.62, 482.66, 485.618, 485.631
0938-0334	491.9, 491.10
0938-0338	486.104, 486.106, 486.110
0938-0354	441.50
0938-0355	442.30, 488.26
0938-0358	488.26
0938-0359	412.40 - 412.52
0938-0360	488.60
0938-0365	484.10, 484.12, 484.14, 484.16, 484.18, , 484.36, 484.48, 484.52
0938-0372	414.330
0938-0378	482.60 - 482.62
0938-0379	442.30, 488.26
0938-0386	405.2100 - 405.2171
0938-0391	488.18, 488.26, 488.28
0938-0426	480.104, 480.105, 480.116, 480.134
0938-0429	447.53
0938-0443	478.18, 478.34, 478.36, 478.42
0938-0444	1004.40, 1004.50, 1004.60, 1004.70
0938-0445	412.44, 412.46, 431.630, 476.71, 476.74, 476.78
0938-0447	405.2133

OMB NUMBER	Approved CFR Sections
0938-0448	405.2133, **45 CFR** 5, 5b; **20 CFR** Parts 401, 422E
0938-0449	440.180, 441.300 - 441.310
0938-0454	424.20
0938-0456	412.105
0938-0463	413.20, 413.24, 413.106
0938-0467	431.17, 431.306, 435.910, 435.920, 435.940 - 435.960
0938-0469	417.126, 422.502, 422.516
0938-0470	417.143, 422.6
0938-0477	412.92
0938-0484	424.123
0938-0501	406.15
0938-0502	433.138
0938-0512	486.301 - 486.348
0938-0526	475.102, 475.103, 475.104, 475.105, 475.106
0938-0534	410.38, 424.5
0938-0544	493.1 - 493.2001
0938-0564	411.32
0938-0565	411.20 - 411.206
0938-0566	411.404, 411.406, 411.408
0938-0573	412.256
0938-0578	447.534
0938-0581	493.1 - 493.2001
0938-0599	493.1 - 493.2001
0938-0600	405.371, 405.378, 413.20
0938-0610	417.436, 417.801, 422.128, 430.12, 431.20, 431.107, 483.10, 484.10, 489.102
0938-0612	493.801, 493.803, 493.1232, 493.1233, 493.1234, 493.1235, 493.1236, 493.1239, 493.1241, 493.1242, 493.1249, 493.1251, 493,1252, 493.1253, 493.1254, 493.1255, 493.1256, 493.1261, 493.1262, 493.1263, 493.1269, 493.1273, 493.1274, 493.1278, 493.1283, 493.1289, 493.1291, 493.1299
0938-0618	433.68, 433.74, 447.272
0938-0653	493.1771, 493.1773, 493.1777
0938-0657	405.2110, 405.2112
0938-0658	405.2110, 405.2112
0938-0667	482.12, 488.18, 489.20, 489.24
0938-0686	493.551 - 493.557
0938-0688	486.301 - 486.325
0938-0691	412.106
0938-0692	466.78, 489.20, 489.27

OMB NUMBER	Approved CFR Sections
0938-0701	422.152
0938-0702	**45 CFR** 146.111, 146.115, 146.117, 146.150, 146.152, 146.160, 146.180
0938-0703	**45 CFR** 148.120, 148.122, 148.124, 148.126, 148.128
0938-0714	411.370 - 411.389
0938-0717	424.57
0938-0721	410.33
0938-0723	421.300 - 421.316
0938-0730	405.410, 405.430, 405.435, 405.440, 405.445, 405.455, 410.61, 415.110, 424.24
0938-0732	417.126, 417.470
0938-0734	**45 CFR** 5b
0938-0739	413.337, 413.343, 424.32, 483.20
0938-0749	424.57
0938-0753	422.000 - 422.700
0938-0754	441.151, 441.152
0938-0758	413.20, 413.24
0938-0760	484.55, 484.205, 484.245, 484.250
0938-0761	484.11, 484.20
0938-0763	422.250, 422.252, 422.254, 422.256, 422.258, 422.262, 422.264, 422.266, 422.270, 422.300, 422.304, 422.306, 422.308, 422.310, 422.312, 422.314, 422.316, 422.318, 422.320, 422.322, 422.324, 423.251, 423.258, 423.265, 423.272, 423.286, 423.293, 423.301, 423.308, 423.315, 423.322, 423.329, 423.336, 423.343, 423.346, 423.350
0938-0770	410.2
0938-0778	422.111, 422.564
0938-0779	417.126, 417.470, 422.64, 422.210
0938-0781	411.404, 484.10
0938-0786	438.352, 438.360, 438.362, 438.364
0938-0790	460.12 - 460.210
0938-0792	491.8, 491.11
0938-0796	422.64
0938-0798	413.24, 413.65, 419.42
0938-0802	419.43
0938-0818	410.141 - 410.146, 414.63
0938-0829	422.568
0938-0832	Parts 489 and 491
0938-0833	483.350 - 483.376
0938-0841	431.636, 457.50, 457.60, 457.70, 457.340, 457.350, 457.431, 457.440,

OMB NUMBER	Approved CFR Sections
	457.525, 457.560, 457.570, 457.740, 457.750, 457.810, 457.940, 457.945, 457.965, 457.985, 457.1005, 457.1015, 457.1180
0938-0842	412.23, 412.604, 412.606, 412.608, 412.610, 412.614, 412.618, 412.626, 413.64
0938-0846	411.352 - 411.361
0938-0857	Part 419
0938-0860	Part 419
0938-0866	**45 CFR** Part 162
0938-0872	413.337, 483.20
0938-0873	422.152
0938-0874	**45 CFR** Parts 160 and 162
0938-0878	Part 422 Subparts F and G
0938-0887	**45 CFR** 148.316, 148.318, 148.320
0938-0897	412.22, 412.533
0938-0907	412.230, 412.304, 413.65
0938-0910	422.620, 422.624, 422.626
0938-0911	426.400, 426.500
0938-0915	421.120, 421.122
0938-0916	483.160
0938-0920	438.6, 438.8, 438.10, 438.12, 438.50, 438.56, 438.102, 438.114, 438.202, 438.206, 438.207, 438.240, 438.242, 438.402, 438.404, 438.406, 438.408, 438.410, 438.414, 438.416, 438.604, 438.710, 438.722, 438.724, 438.810
0938-0921	414.804
0938-0931	**45 CFR** 142.408, 162.408, and 162.406
0938-0933	438.50
0938-0935	422 Subparts F and K
0938-0936	423
0938-0939	405.502
0938-0944	422.250, 422.252, 422.254, 422.256, 422.258, 422.262, 422.264, 422.266, 422.270, 422.300, 422.304, 422.306, 422.308, 422.310, 422.312, 422.314, 422.316, 422.318, 422.320, 422.322, 422.324, 423.251, 423.258, 423.265, 423.272, 423.279, 423.286, 423.293, 423.301, 423.308, 423.315, 423.322, 423.329, 423.336, 423.343, 423.346, 423.350
0938-0950	405.910
0938-0951	423.48
0938-0953	405.1200 and 405.1202
0938-0954	414.906, 414.908, 414.910, 414.914, 414.916

OMB NUMBER	Approved CFR Sections
0938-0957	Part 423 Subpart R
0938-0964	403.460, 411.47
0938-0969	421.405
0938-0975	423.562(a)
0938-0976	423.568
0938-0977	Part 423 Subpart R
0938-0978	423.464
0938-0982	422.310, 423.301, 423.322, 423.875, 423.888
0938-0986	412.20-412.30
0938-0990	423.56
0938-0992	423.505, 423.514
0938-0993	1396
0938-0997	424.5
0938-0999	Part 424 Subpart C
0938-1004	423.502
0938-1009	411.357(v), 411.357(w)
0938-1013	423.56(e)
0938-1019	405.1206, 422.622
0938-1020	412.525(a)(4), 412.529(c)(3), 412.84(i)(2)
0938-0123	422.152(a)(1), 422.152(a)(2)
0938-1024	1396
0938-1026	447.520
0938-1013	423.56e
0938-1019	405.1206, 422.622
0938-1023	422.152a
0938-1033	455
0938-1034	489.20
0938-1049	424.36(b)

ADDENDUM VIII: Medicare-Approved Carotid Stent Facilities April Through June 2010

On March 17, 2005, we issued our decision memorandum on carotid artery stenting. We determined that carotid artery stenting with embolic protection is reasonable and necessary only if performed in facilities that have been determined to be competent in performing the evaluation, procedure, and follow-up necessary to ensure optimal patient outcomes. We have created a list of minimum standards for facilities modeled in part on professional society statements on competency. All facilities must at least meet our standards in order to receive coverage for carotid artery stenting for high risk patients.

Facility	Provider Number	Effective Date	State	Additional Information
Central Mississippi Medical Center 1850 Chadwick Drive Jackson, MS 39204	250072	05/06/2010	MS	
Fairfield Medical Center 201 North Ewing Street Lancaster, OH 43130	360072	05/06/2010	OH	
Eastern Idaho Regional Medical Center 3100 Channing Way Idaho Falls, ID 83401	130018	06/04/2010	ID	
Ocala Regional Medical Center 1431 SW First Avenue Ocala, FL 34474	100212	06/04/2010	FL	
Scott & White Healthcare – Round Rock 302 University Boulevard Round Rock, TX 78665	670034	06/04/2010	TX	
Trinity Hospital of Augusta 2260 Wrightsboro Road Augusta, GA 30904	110039	06/04/2010	GA	
Kaiser Sunnyside Medical Center 10180 SE Sunnyside Road Clackamas, OR 97015	941105628	06/30/2010	OR	

Facility	Provider Number	Effective Date	State	Additional Information
Rockingham Memorial Hospital 235 Cantrell Avenue Harrisonburg, VA 22801	490004	06/30/2010	VA	
St. Mary's Hospital 700 S. Park Street Madison, WI 53715	520083	06/30/2010	WI	

ADDENDUM IX: American College of Cardiology's National Cardiovascular Data Registry Sites
April Through June 2010

In order to obtain reimbursement, Medicare national coverage policy requires that providers implanting ICDs for primary prevention clinical indications (that is, patients without a history of cardiac arrest or spontaneous arrhythmia) report data on each primary prevention ICD procedure. This policy became effective January 27, 2005. Details of the clinical indications that are covered by Medicare and their respective data reporting requirements are available in the Medicare National Coverage Determination (NCD) Manual, which is on the Centers for Medicare & Medicaid Services (CMS) Web site at http://www.cms.hhs.gov/Manuals/IOM/itemdetail.asp?filterType=none&filterByDID=99&sortByDID=1&sortOrder=ascending&itemID=CMS014961 .

A provider can use either of two mechanisms to satisfy the data reporting requirement. Patients may be enrolled either in an Investigational Device Exemption trial studying ICDs as identified by the FDA or in the American College of Cardiology's National Cardiovascular Data Registry (ACC-NCDR) ICD registry. Therefore, in order for a beneficiary to receive a Medicare-covered ICD implantation for primary prevention, the beneficiary must receive the scan in a facility that participates in the ACC-NCDR ICD registry. We maintain a list of facilities that have been enrolled in this registry. Addendum IX includes the facilities that have been designated in the quarter covered by this notice.

Facility Name	Address 1	Address 2	City	State	Zip Code
Abbott Northwestern Hospital	800 East 28th Street (Internal Zip 33210)		Minneapolis	MN	55407
Abilene Regional Medical Center	6250 Highway 83-84 Antilley Road		Abilene	TX	79606
Abington Memorial Hospital	1200 Old York Road	5 Toll	Abington	PA	19001
Adena Regional Medical Center	272 Hospital Road		Chillicothe	OH	45601
Adventist Bolingbrook Hospital	500 Remington Boulevard		Bolingbrook	IL	60440
Adventist Glen Oaks Hospital	701 Winthrop Avenue		Glendale Heights	IL	60139
Adventist Hinsdale Hospital	120 North Oak Street		Hinsdale	IL	60521
Adventist LaGrange Memorial Hospital	120 North Oak Street		Hinsdale	IL	60521
Adventist Medical Center	10123 SE Market Street		Portland	OR	97216
Advocate BroMenn Medical Center	1304 Franklin Avenue		Normal	IL	61761
Advocate Christ Medical Center	4440 West 95th Street		Oak Lawn	IL	60453
Advocate Condell Medical Center	801 S. Milwaukee Avenue		Libertyville	IL	60048
Advocate Good Shepherd Hospital	450 W. Highway 22		Barrington	IL	60010

Facility Name	Address 1	Address 2	City	State	Zip Code
Advocate Illinos Masonic Medical Center	836 W. Wellington Avenue		Chicago	IL	60657
Advocate Lutheran General Hospital	1775 Dempster Street		Park Ridge	IL	60068
Advocate South Suburban Hospital	17800 South Kedzie		Hazel Crest	IL	60429
Affinity Medical Center	400 Austin Avenue		Massillon	OH	44646
AHMC Anaheim Regional Medical Center	1111 W. La Palma Avenue		Anaheim	CA	92801
Aiken Regional Medical Center	302 University Parkway		Aiken	SC	29802
Akron City Hospital	525 East Market Street		Akron	OH	44309-2090
Akron General Medical Center	400 Wabash Avenue	Heart & Vascular Center	Akron	OH	44307
Alamance Regional Medical Center	PO Box 202		Burlington	NC	27216
Alaska Regional Hospital	2801 Debarr Road		Anchorage	AK	99508
Albany Medical Center Hospital	43 New Scotland Avenue		Albany	NY	12208

Facility Name	Address 1	Address 2	City	State	Zip Code
Albert Einstein Medical Center	5501 Old York Road	Levy Bldg. 3rd floor	Philadelphia	PA	19141
Alegent Health Bergan Mercy Medical Center	6901 North 72nd Streeet		Omaha	NE	68122
Alegent Health Immanuel Medical Center	6901 North 72nd Street	Suite 3000 N	Omaha	NE	68122-1709
Alegent Health Mercy Hospital	6901 North 72nd Street	Suite 3000	Omaha	NE	68122
Alexian Brothers Medical Center	800 Biesterfield Road		Elk Grove Village	IL	60007-3311
Allegheny General Hosptial	320 East North Avenue		Pittsburgh	PA	15212
Allegiance Health (W.A. Foote Memorial Hospital)	205 N. East Avenue	Heart Center 1st Floor	Jackson	MI	49201
Allen Memorial Hospital	1825 Logan Avenue		Waterloo	IA	50703
Alpena Regional Medical Center	1501 W. Chisholm Street		Alpena	MI	49707
Alta Bates Medical Center	2450 Ashby Avenue		Berkeley	CA	94705
Alta Bates Summit Medical Center	350 Hawthorne Avenue		Oakland	CA	94609
Alton Memorial Hospital	1 Memorial Drive		Alton	IL	62067
Altoona Hospital	620 Howard Avenue		Altoona	PA	16601

Facility Name	Address 1	Address 2	City	State	Zip Code
Altru Health System	1200 South Columbia Road		Grand Forks	ND	58201
Alvarado Hospital	6645 Alvarado Road		San Diego	CA	92120
Amarillo Endoscopy Center	6833 Plum Creek Drive		Amarillo	TX	79124
AnMed Health	800 North Fant Street		Anderson	SC	29621
Anna Jaques Hospital	25 Highland Avenue		Newburyport	MA	01950
Anne Arundel Medical Center	2001 Medical Parkway		Annapolis	MD	21404
Appleton Medical Center/ThedaClark Medical Center	1818 N. Meade Street	Quality Dept. Rm 165-B	Appleton	WI	54911
Aria Health	Knights and Red Lion Roads		Philadelphia	PA	19114
Arizona Heart Hospital	1930 East Thomas Road		Phoenix	AZ	85016
Arizona Regional Medical Center	4838 East Baseline Road	Suite 109-110	Mesa	AZ	85206
Arkansas Heart Hospital	1701 S. Shackelford Road		Little Rock	AR	72202
Arlington Memorial Hospital	800 W. Randol Mill Road		Arlington	TX	76012
Arnot-Ogden Medical Center	600 Roe Avenue		Elmira	NY	14905
Aroostock Medical Center	140 Academy Street		Presque Isle	ME	04769
Arrowhead Hospital	18701 N. 67th Avenue		Glendale	AZ	85308

Facility Name	Address 1	Address 2	City	State	Zip Code
Ashtabula County Medical Center	2420 Lake Avenue		Ashtabula	OH	44004
Aspirus Wausau Hospital	333 Pine Ridge Boulevard		Wausau	WI	54401
Athens Regional Medical Center	1199 Prince Avenue		Athens	GA	30606
Atlanta Medical Center	303 Parkway Drive NE		Atlanta	GA	30312
Atlanticare Regional Medical Center	2500 English Creek Avenue		Egg Habour Township	NJ	08234
Atrium Medical Center	One Medical Center		Middletown	OH	45005
Audrain Medical Center	620 E. Monroe Street		Mexico	MO	65265
Aultman Hospital	2600 Sixth Street SW		Canton	OH	44710
Aurora BayCare Medical Center	2845 Greenbrier Road		Green Bay	WI	54308
Aurora Medical Center – Kenosha	2900 W. Oklahoma Avenue		Milwaukee	WI	53125
Aurora Medical Center of Washington County	2900 W. Oklahoma Avenue		Milwaukee	WI	53215
Aurora Medical Center Oshkosh	855 N. Westhaven Street		Oshkosh	WI	53132
Aurora Medical Center Summit	2900 W. Oklahoma Avenue		Milwaukee	WI	53215

Facility Name	Address 1	Address 2	City	State	Zip Code
Aurora Memorial Hospital of Burlington	2900 W. Oklahoma Avenue		Milwaukee	WI	53215
Aurora Sheboygan Memorial Medical Center	2629 N. 7th Street		Sheboygan	WI	53083
Aurora Sinai Medical Center	945 N. 12th Street		Milwaukee	WI	53233
Aurora West Allis Memorial Hospital	2900 E. Oklahoma Avenue		Milwaukee	WI	53215
Auxilio Mutuo Hospital	Apartado 191227		San Juan	PR	00919-1227
Aventura Hospital and Medical Center	5631 Glencrest Boulevard		Tampa	FL	33625-1008
Avera Heart Hospital of South Dakota	4500 West 69th Street		Sioux Falls	SD	57108
Avera Sacred Heart Hospital	501 Summit		Yankton	SD	57078
Avera St. Luke's	305 South State Street		Aberdeen	SD	57401
Bakersfield Heart Hospital	3001 Sillect Avenue		Bakersfield	CA	93308
Bakersfield Memorial Hospital	420 34th Street		Bakersfield	CA	93303-1888
Ball Memorial Hospital	2401 University Avenue		Muncie	IN	47303

Facility Name	Address 1	Address 2	City	State	Zip Code
Baltimore Washington Medical Center	301 Hosptial Drive	2nd Floor Cardiac Cath Lab	Glen Burnie	MD	21061
Banner Boswell Medical Center	10401 W. Thunderbird Boulevard		Sun City	AZ	85351
Banner Desert Medical Center	Banner Desert Medical Center, Quality Management	1400 S. Dobson Road	Mesa	AZ	85202
Banner Estrella Medical Center	9201 W. Thomas Road		Phoenix	AZ	85037
Banner Good Samaritan Med Center	1111 East McDowell Road		Phoenix	AZ	85006-2612
Banner Heart Hospital	6750 E. Baywood Avenue		Mesa	AZ	85206
Banner Thunderbird Med Center	5555 W. Thunderbird Road		Glendale	AZ	85306
Baptist Health Medical Center	9601 Interstate 630 Exit 7		Little Rock	AR	72205-7299
Baptist Health Medical Center	3333 Springhill Drive		North Little Rock	AR	72117
Baptist Hospital	4220 Harding Road		Nashville	TN	37202
Baptist Hospital East	4000 Kresge Way		Louisville	KY	40207
Baptist Hospital of Miami	8900 SW 88th Street		Miami	FL	33176
Baptist Hospital of Southeast Texas	PO Box 1591	3080 College Street	Beaumont	TX	77704
Baptist Hospital	1000 W. Moreno Street		Pensacola	FL	32501
Baptist Medical Center	800 Prudential Drive		Jacksonville	FL	32207

Facility Name	Address 1	Address 2	City	State	Zip Code
Baptist Medical Center	730 North Main Avenue	Suite 424	San Antonio	TX	78205
Baptist Memorial Hospital	6019 Walnut Grove Road		Memphis	TN	38120
Baptist Memorial Hospital North Mississippi	2301 South Lamar Boulevard		Oxford	MS	38655
Baptist Memorial Hospital-Desoto	7601 Southcrest Parkway		Southaven	MS	38671
Baptist Memorial Hospital-Union City	1201 Bishop Street		Union City	TN	38261
Baptist St. Anthony's Health Systems	1600 Wallace Boulevard		Amarillo	TX	79106
Barberton Citizens Hospital	155 5th Street NE		Barberton	OH	44203
Barnes Jewish Hospital/Washington University	#1 Barnes Jewish Hospital Plaza	SW Tower-Main. Mailstop 90-59-315	Saint Louis	MO	63110-9930
Barstow Community Hospital	555 South Seventh Street		Barstow	CA	92311
Bartow Regional Medical Center	2200 Osprey Boulevard		Bartow	FL	33830
Bassett Healthcare-(Mary Imogene Bassett Hospital)	One Atwell Road		Cooperstown	NY	13326

Facility Name	Address 1	Address 2	City	State	Zip Code
Baton Rouge General Medical Center	3600 Florida Boulevard	8585 Picardy Avenue (Zip 70809)	Baton Rouge	LA	70806
Battle Creek Health System	300 North Avenue		Battle Creek	MI	49016
Baxter Regional Medical Center Attn: A/P	624 Hospital Drive		Mountain Home	AR	72653
Bay Medical Center	615 North Bonita Avenue		Panama City	FL	32401
Bay Regional Medical Center	1900 Columbus Avenue		Bay City	MI	48708
Bayfront Medical Center	701 Sixth Street South		St. Petersburg	FL	33701
Bayhealth Medical Center(KGH)	640 S. State Street		Dover	DE	19901
Baylor All Saints Medical Center at Fort Worth	1400 8th Avenue		Fort Worth	TX	76104
Baylor Jack and Jane Hamilton Heart and Vascular Hospital	621 North Hall Street		Dallas	TX	75226
Baylor Medical Center at Garland	2300 Marie Curie Drive		Garland	TX	75042
Baylor Medical Center at Irving	1901 North MacArthur Boulevard		Irving	TX	75061

Facility Name	Address 1	Address 2	City	State	Zip Code
Baylor Regional Medical Center at Grapevine	1650 West College Street		Grapevine	TX	76051
Bayshore Medical Center	4000 Spencer Highway		Pasadena	TX	77504
Baystate Medical Center	759 Chestnut Street	Springfield 4 4558	Springfield	MA	01199
Beaufort Memorial Hospital	955 Ribaut		Beaumont	SC	29902
Beauregard Memorial Hospital	600 S. Pine Street		Deridder	LA	70634
Bellin Memorial Hospital	744 S. Webster Avenue	Cardiac Data Center 5th Floor	Green Bay	WI	54301
Benefis Healthcare	1101 26th Street South		Great Falls	MT	59405-5161
Berkshire Medical Center, Inc.	725 North Street		Pittsfield	MA	01201-4124
Bert Fish Medical Center	401 Palmetto Street		New Smyrna Beach	FL	32168
Beth Israel Deaconess Medical Center	185 Pilgrim Road, Baker 4		Boston	MA	02215
Bethesda Memorial Hospital	2815 S. Seacrest Blvd		Boynton Beach	FL	33435
Bethesda North Hospitals	375 Dixmyth Avenue		Cincinnati	OH	45220-2489

Facility Name	Address 1	Address 2	City	State	Zip Code
Beverly Hospital	85 Herrick Street		Beverly	MA	01915
Bexar County Hospital District d.b.a. University Health	4502 Medical Drive	Stop 34-1	San Antonio	TX	78229
Billings Clinic (formerly Deaconess)	2800 9^{th} Avenue, North		Billings	MT	59101
Biloxi Regional Medical Center	150 Reynoir Street		Biloxi	MS	39531
Blake Medical Center	2020 59^{th} Street West		Bradenton	FL	34209
Blanchard Valley Hospital	1900 South Main Street	HeartCare Center	Findlay	OH	45840
Blessing Hospital	1005 Broadway	PO Box 7005	Quincy	IL	62305-7005
Bloomington Hospital	601 W. Second Street	PO Box 1149	Bloomington	IN	47403
Boca Raton Community Hospital	12201 NW Second Place		Coral Springs	FL	33071
Bon Secours DePaul Medical Center	150 Kingsley Lane		Norfolk	VA	23505
Bon Secours – Maryview Medical Center	3636 High Street		Portsmouth	VA	23707
Bon Secours- Memorial Regional Medical Center	8260 Atlee Road		Mechanicsville	VA	23116
Bon Secours St Francis Medical Center	13710 St. Francis Boulevard		Midlothian	VA	23114

Facility Name	Address 1	Address 2	City	State	Zip Code
Bon Secours St. Marys Hospital	5801 Bremo Road	Cardiac Cath Lab	Richmond	VA	23226
Boone Hospital Center	1600 E. Broadway		Columbia	MO	65201-5897
Borgess Medical Center	1521 Gull Road		Kalamazoo	MI	49048
Boston Medical Center	One Boston Medical Place		Boston	MA	02118
Bothwell Regional Health Center	601 East 14th Street		Sedalia	MO	65301
Botsford Hospital	28050 Grand River Avenue		Farmington Hills	MI	48336
Boulder Community Hospital	1100 Balsam Avenue		Boulder	CO	80304
Brandon Regional Hospital	119 Oakfield Drive		Brandon	FL	33511
Brandywine Hospital	201 Reeceville Road		Coatesville	PA	19320
Bridgeport Hospital	267 Grant Street		Bridgeport	CT	06610
Brigham & Womens Hospital	75 Francis Street	L258A	Boston	MA	02115
Bronson Methodist Hospital	601 John Street		Kalamazoo	MI	49007-5348
Brookdale Hospital & Medical Center	1 Brookdale Plaza		Brooklyn	NY	11212
Brooklyn Hospital Center	121 DeKalb Avenue		Brooklyn	NY	11201

Facility Name	Address 1	Address 2	City	State	Zip Code
Brooksville Regional Hospital	17240 Cortez Boulevard		Brooksville	FL	34601
Brookwood Medical Center	2010 Brookwood Medical Center		Birmingham	AL	35209
Broward General Medical Center	1600 S. Andrews Avenue		Ft. Lauderdale	FL	33316
Brownsville Doctors Hospital	4750 N. Expressway		Brownsville	TX	78526
Bryan LGH Medical Center	1600 South 48th Street		Lincoln	NE	68526
Bryn Mawr Hospital	Suite 557 Lankenau MOB East	100 Lancaster Avenue	Wynnewood	PA	19096
Buffalo General Hospital	3 Gates Circle		Buffalo	NY	14209
Cabell Huntington Hospital	1340 Hal Greer Boulevard		Huntington	WV	25701
California Pacific Medical Center	2330 Clay Street, Stern Building, Room #103	Stern Building, Room #103	San Francisco	CA	94115
CAMC Teays Valley Hospital	1400 Hospital Drive		Hurricane	WI	25526
Camden-Clark Memorial Hospital	800 Garfield Avenue		Parkersburg	WV	26101
Cape Canaveral Hospital	701 West Cocoa Beach Causeway		Cocoa Beach	FL	32931
Cape Cod Hospital	40 Quinlan Way		Hyannis	MA	02601
Cape Fear Valley Health System	303 Wagoner Drive		Fayetteville	NC	28303-4646

Facility Name	Address 1	Address 2	City	State	Zip Code
Capital Medical Center	3900 Capital Mall Drive		Olympia	WA	98502
Capital Regional Medical Center	2626 Capital Medical Blvd		Tallahassee	FL	32308
Capital Regional Medical Center	1125 Madison Street (PO Box 1128)		Jefferson City	MO	65102-1128
Cardiovascular Center of Puerto Rico	PO Box 366528		San Juan	PR	00936-6528
Carilion Roanoke Memorial Hosp	Att: Cardiac Cath Lab	PO Box 13367	Roanoke	VA	24033-3367
Caritas Good Samaritan Medical Center	235 North Pearl Street		Brockton	MA	02301
Caritas Norwood Hospital	800 Washington Street		Norwood	MA	02062
Carle Foundation Hospital	611 W. Park Street		Urbana	IL	61801
Carolina Pines Regional Medical Center	1304 W. BoBo Newsom Highway		Hartsville	SC	29550
Carolina East Medical Center	2000 Neuse Blvd	PO Box 12157	New Bern	NC	28560
Carolinas Hospital System	805 Pamplico Highway		Florence	SC	29505
Carolinas Medical Center	1001 Blythe Boulevard		Charlotte	NC	28227
Carolinas Medical Center – Mercy	720 E. Morehead Street	Cath Lab	Charlotte	NC	28202

Facility Name	Address 1	Address 2	City	State	Zip Code
Carondelet Heart Institute at St. Joseph Medical Center	1000 Carondelet Drive		Kansas City	MO	64114
Carroll Hospital Center	200 Memorial Avenue		Westminster	MD	21157
Carson Tahoe Regional Medical Center	1600 Medical Parkway		Carson City	NV	89706
Cartersville Medical Center	960 Joe Frank Harris Parkway		Cartersville	GA	30120
Casa Grande Regional Medical Center	1800 E. Florence Boulevard		Casa Grande	AZ	85222
Castleview Hospital	300 North Hospital Drive		Price	UT	84501
Catawba Valley Medical Center	810 Fairgrove Church Road		Hickory	NC	28602
Catholic Medical Center	100 McGregor Street	Level C Room 248	Manchester	NH	03102-3770
Cayuga Medical Center at Ithaca	101 Dates Drive		Ithaca	NY	14850
Cedars-Sinai Health Systems	8700 Beverly Boulevard	MGB 901	Los Angeles	CA	90048
Centennial Hills Hospital Medical Center	6900 N. Durango Drive		Las Vegas	NV	89149-4409
Centennial Medical Center	12505 Lebanon Boulevard		Frisco	TX	75035

Facility Name	Address 1	Address 2	City	State	Zip Code
Centennial Medical Center	2300 Patterson Street		Nashville	TN	37203
Centerpoint Medical Center	19600 E. 39th Street		Independence	MO	64057
Centinela Hospital Medical Center	555 E. Hardy Street		Inglewood	CA	90301
Central Baptist Hospital	1800 Nicholasville Road Suite 401		Lexington	KY	40503
Central DuPage Hospital	25 N. Winfield Road		Winfield	IL	60190
Central Florida Regional Hospital	1401W. Seminole Boulevard		Sanford	FL	32771
Central Maine Medical Center	CMHVI 60 High Street		Lewiston	ME	04240
Central Minnesota Heart Center at St. Cloud Hospital	1406 Sixth Avenue North		St. Cloud	MN	56303
Central Mississippi Medical Center	1850 Chadwick Drive		Jackson	MS	39204
Central Washington Hospital	1201 South Miller Street		Wenatchee	WA	98801
Chandler Regional Medical Center	475 S. Dobson Road		Chandler	AZ	85224
Charleston Area Medical Center	501 Morris Street		Charleston	WV	25301

Facility Name	Address 1	Address 2	City	State	Zip Code
Charlotte Regional Medical Center	809 East Marion Avenue		Punta Gorda	FL	33950
Charlton Memorial Hospital	363 Highland Avenue		Fall River	MA	02720-3700
Chattanooga-Hamilton County Hospital Authority/ER	975 E. Third Street		Chattanooga	TN	37403
Chesapeake General Hospital	736 Battlefield Boulevard North		Chesapeake	VA	23320
Cheshire Medical Center	580 Court Street		Keene	NH	03431
Chester County Hospital	701 E. Marshall Street		West Chester	PA	19380
Cheyenne Regional Medical Center	214 E. 23rd Street		Cheyenne	WY	82001
Children's National Medical Center	111 Michigan Ave NW		Washington	DC	20010
Christian Hospital	11133 Dunn Road		St Louis	MO	63136
Christiana Care Health System	4755 Ogletown-Stanton Road		Newark	DE	19718
Christus Hospital-St. Mary	3600 Gates Boulevard		Port Arthur	TX	77642
Christus Saint Elizabeth Hospital	2830 Calder Street		Beaumont	TX	77702
Christus Hospital-St. Mary	3600 Gates Blvd		Port Arthur	TX	77642

Facility Name	Address 1	Address 2	City	State	Zip Code
Christus Santa Rosa Hospital	333 N. Santa Rosa Street		San Antonio	TX	78207
Christus Santa Rosa Hospital - Medical Center	333 N. Santa Rosa Street		San Antonio	TX	78207-3198
Christus Santa Rosa Hospital - New Braunfels	333 N. Santa Rosa Street		San Antonio	TX	78207-3198
Christus Spohn Hospital Corpus Christi – Shoreline	600 Elizabeth Street		Corpus Christi	TX	78404
Christus St. Catherine	701 S.Fry Rd	Cath Lab	Katy	TX	77450
Christus St. John Hospital	18300 St. John Drive	Cath Lab	Nassau Bay	TX	77058
Christus St. Michael Health System	2600 St. Michael Drive		Texarkana	TX	75503
Christus St. Patrick Hospital	524 South Ryan Street		Lake Charles	LA	70602-3401
Christus – Schumpert Highland Hospital	One St. Mary Place		Shreveport	LA	71101
Christus – St. Frances Cabrini Hospital	3330 Masonic Drive	Cath Lab	Alexandria	LA	71301
Citrus Memorial Health System	502 W. Highland Boulevard		Inverness	FL	34452
Citrus Valley Medical Center	210 W. San Bernardino		Covina	CA	91723
CJW Medical Center	7101 Jahnke Road		Richmond	VA	23225-4044
Claremore Regional Hospital	1202 N Muskogee Place		Claremore	OK	74017

Facility Name	Address 1	Address 2	City	State	Zip Code
Clarian Arnett	5165 McCarty Lane		Lafayette	IN	47905
Clarian Health Partners-Methodist Hospital campus	1701 N. Senate Boulevard	Room A1082	Indianapolis	IN	46202
Clarian North Medical Center	11725 Illinois Street B-178		Carmel	IN	46032
Clark Memorial Hospital	1220 Missouri Avenue		Jeffersonville	IN	47130
Clear Lake Regional Medical Center	500 Medical Center Boulevard		Webster	TX	77598
Cleveland Clinic Florida	3100 Weston Road		Weston	FL	33331
Cleveland Clinic Foundation	9500 Euclid Avenue		Cleveland	OH	44195
Coliseum Medical Centers	350 Hospital Drive		Macon	GA	31217
College Station Medical Center	1604 Rock Prairie Road		College Station	TX	77845
Columbia Hospital	4425 North Port Washington Road		Glendale	WI	53212
Columbia Regional Hospital	404 Keene Street		Columbia	MO	65201
Columbia St. Mary's Hospital Ozaukee	13111 N. Port Washington Road		Mequon	WI	53097
Columbus Cardiovascular Care, PLLC	2520 5th Street North PO Box 1307		Columbus	MS	39703

Facility Name	Address 1	Address 2	City	State	Zip Code
Columbus Regional Hospital	2400 17th Street		Columbus	IN	47201
Comanche County Memorial Hospital	3401 W. Gore Boulevard	PO Box 129	Lawton	OK	73505
Community Health Partners	3700 Kolbe Road		Lorain	OH	44053
Community Hospital	5637 Marine Parkway		New Port Richey	FL	34652
Community Hospital	The Community Hospital	901 MacArthur Boulevard	Munster	IN	46321
Community Hospital and Wellness Center	433 West High Street		Bryan	OH	43506
Community Hospital East	Cardiovascular Services	1500 North Ritter Avenue	Indianapolis	IN	46219
Community Hospital of the Monterey Peninsula	PO Box HH		Monterey	CA	93942-1085
Community Hospital South	1500 N. Ritter Avenue		Indianapolis	IN	46219-3027
Community Medical Center	2827 Fort Missoula Rd		Missola	MT	59804
Community Medical Center	99 Highway 37 West		Toms River	NJ	08775
Community Medical Center	1800 Mulberry Street		Scranton	PA	18510
Community Medical Center – Clovis	2755 Herndon Avenue		Clovis	CA	96311

Facility Name	Address 1	Address 2	City	State	Zip Code
Community Memorial Hospital	147 N. Brent Street		Ventura	CA	93003
Community Memorial Hospital	W180 N8085 Town Hall Road		Menomonee Falls	WI	53052
CommunityMercy AKA Springfield Regional Medical Center	2615 E. High Street		Springfield	OH	45525
Concord Hospital	250 Pleasant Street		Concord	NH	03301
Conroe Regional Medical Center	504 Medical Center Boulevard		Conroe	TX	77304
Covenant Heart Institute	3615 19th Street		Lubbock	TX	79410
Conway Regional Medical Center	2302 College Avenue		Conway	AR	72034-6226
Cookeville Regional Medical Center	1 Medical Center Blvd		Cookeville	TN	38501
Cooley Dickinson Hospital	30 Locust Street		Northampton	MA	01060
Cooper University Hospital	One Cooper Plaza	D386B	Camden	NJ	08103
Coral Gables Hospital	3100 Douglass Road		Coral Gables	FL	33134
Corpus Christi Medical Center	7101 SPID		Corpus Christi	TX	78412
Covenant Healthcare	1447 N. Harrison Street		Saginaw	MI	48602
Covenant Medical Center	3421 West Ninth Street		Waterloo	IA	50702

Facility Name	Address 1	Address 2	City	State	Zip Code
Cox Medical Center South	3801 S. National Avenue		Springfield	MO	65807
Creighton University Medical Center	601 N. 30th Street		Omaha	NE	68131
Crestwood Medical CenterTriad Hospitals, Inc.	One Hospital Drive		Huntsville	AL	35801-3495
Crittenton Hospital Medical Center	1101 W. University Drive		Rochester	MI	48307-1831
Crouse Hospital	736 Irving Avenue		Syracuse	NY	13210
Crozer Chester Medical Center	1 Medical Center Boulevard		Chester	PA	19013-3995
Cumberland Cardiology	5000 US Route 321		Prestonsburg	KY	41653
CVPH Medical Center	75 Beekman Street		Plattsburgh	NY	12901-1493
Cypress Fairbanks Medical Center	10655 Steepletop Drive		Houston	TX	77065
Dallas Regional Medical Center	1011 N. Galloway Avenue		Mesquite	TX	75149
Dameron Hospital	525 W. Acacia Street		Stockton	CA	95203
Danbury Hospital	24 Hospital Avenue	Cardiology 2 South	Danbury	CT	06810
Danville Regional Medical Center	142 South Main Street		Danville	VA	24541
Dauterive Hospital	600 N. Lewis Street		New Iberia	LA	70563

Facility Name	Address 1	Address 2	City	State	Zip Code
Davis Hospital	1600 West Antelope Drive		Layton	UT	84041
DCH Regional Medical Center	809 University Boulevard E		Tuscaloosa	AL	35401-2029
Deaconess Hospital	5501 N. Portland Avenue		Oklahoma City	OK	73112
Deaconess Hospital	311 Straight Street		Cincinnati	OH	45129
Deaconess Hospital	600 Mary Street		Evansville	IN	47747
Deaconess Medical Center	W. 800 Fifth Avenue		Spokane	WA	99204
Deborah Heart & Lung Center	200 Trenton Road		Browns Mills	NJ	08015
Decatur General Hospital	1201 7th Street		Decatur	AL	35601
Dekalb Medical Center	2701 N. Decatur Road		Decatur	GA	30033
Dekalb Regional Medical Center	200 Medical Center Drive		Fort Payne	AL	35968
Del Sol Medical Center	10301 Gateway West		El Pasoq	TX	79925
Delray Medical Center	5352 Linton Boulevard		Delray Beach	FL	33484
Denton Regional Medical Center	3535 South I-35E		Denton	TX	76205
Denver Health Medical Center	777 Bannock Street		Denver	CO	80204
DePaul Health Center	12303 DePaul Drive		Bridgeton	MO	63044
Des Peres Hospital	2345 Dougherty Ferry Road		St. Louis	MO	63122

Facility Name	Address 1	Address 2	City	State	Zip Code
Desert Regional Medical Center	1150 N. Indian Canyon		Palm Springs	CA	92262
Desert Springs Hospital	2075 E. Flamingo Road		Las Vegas	NV	89119
Desert Valley Hospital	16850 Bear Valley Road		Victorville	CA	92392
DeTar Hospital	506 E. San Antonio Street		Victoria	TX	77902
Dixie Regional Medical Center	1380 E. Medical Drive		St. George	UT	84790
Doctors Hospital	5000 University Drive		Miami	FL	33146
Doctors Hospital	5100 West Broad Street		Columbus	OH	43228
Doctors Hospital	9440 Poppy Drive		Dallas	TX	75218
Doctors Hospital at Renaissance	5501 S. McColl Road		Edinburg	TX	78539
Doctors Hospital – Augusta	3651 Wheeler Drive		Augusta	GA	30909
Doctors Hospital of Laredo	10700 McPherson Rd		Laredo	TX	78045
Doctors Hospital of Sarasota	5731 Bee Ridge Road		Sarasota	FL	34233
Doctors Hospital-Tidwell	510 West Tidwell		Houston	TX	77091

Facility Name	Address 1	Address 2	City	State	Zip Code
Doctors Medical Center	2000 Vale Road		San Pablo	CA	94806
Doctors Medical Center	1441 Florida Avenue		Modesto	CA	95350
Dominican Santa Cruz Hospital	1555 Soquel Drive		Santa Cruz	CA	95065
Downey Regional Medical Center	11500 Brookshire Avenue		Downey	CA	90241
Doylestown Hospital	595 West State Street		Doylestown	PA	18901
Dr. P. Phillips Hospital	1414 Kuhl Avenue		Orlando	FL	32806
DuBois Regional Medical Center	100 Hospital Avenue		DuBois	PA	15801
Duke Raleigh Hospital	3400 Wake Forest Road		Raleigh	NC	27609
Duke University Hospital	Erwin Road DUMC 3943		Durham	NC	27710
Dunn Memorial Hospital	1600 23rd Street		Bedford	ID	47421
Durham Regional Hospital	3643 N. Roxboro Road		Durham	NC	27704
East Alabama Medical Center	2000 Pepperell Parkway		Opelika	AL	36830
East Georgia Regional Medical Center	1499 Fair Road (PO Box 1048)		Statesboro	GA	30459

Facility Name	Address 1	Address 2	City	State	Zip Code
East Jefferson General Hospital	4200 Houma Boulevard	Quality Management Department	Metairie	LA	70006
East Ohio Regional Hospital	90 N. 4th St.		Martins Ferry	OH	43935
East Texas Medical Center	1000 S. Beckham Avenue		Tyler	TX	75711
Eastern Idaho RMC	3100 Channing Way		Idaho Falls	ID	83404
Eastern Maine Medical Center	489 State Street	PO Box 404	Bangor	ME	04402-0404
Easton Hospital (Northampton Hospital Corp.)	250 South 21st Street		Easton	PA	18042
Edward Hospital	801 S. Washington Street	3rd floor Heart Hospital	Naperville	IL	60540
Eisenhower Medical Center	39000 Bob Hope Drive		Rancho Mirage	CA	92270
El Camino Hospital	2500 Grant Road		Mountain View	CA	94040
Eliza Coffee Memorial Hospital	603 West College Street		Florence	AL	35630
Elkhart General Hospital	600 East Boulevard	3 South Suites	Elkhart	IN	46514-2499
Elliot Hospital	1 Elliot Way		Manchester	NH	03103
Ellis Hospital	1101 Nott Street		Schenectady	NY	12308

Facility Name	Address 1	Address 2	City	State	Zip Code
Elmhurst Hospital Center	79-01 Broadway	Dept of Cardiology, Suite D-54	Elmhurst	NY	11373
Elmhurst Memorial Hospital Marquardt Memorial Lib	200 Berteau Avenue		Elmhurst	IL	60126
EMH Regional Medical Center	630 East River Street		Elyria	OH	44035
Emory Crawford Long Hospital	1364 Clifton Rd NE		Atlanta	GA	30322
Emory Dunwoody Medical Center	4575 North Shallowford Road		Atlanta	GA	30338
Emory Eastside Medical Center	1700 Medical Way		Snellville	GA	30078
Emory Johns Creek	6325 Hospital Parkway		Johns Creek	GA	30097
Emory University Hospital	1364 Clifton Road NE	Office C430	Atlanta	GA	30322
Englewood Community Hospital (HCA)	700 Medical Boulevard		Englewood	FL	34223
Englewood Hospital & Medical Center	350 Engle Street		Englewood	NJ	07631
Enloe Medical Center	1600 Esplanade		Chico	CA	95926
Erie County Medical Center	462 Grider Street		Buffalo	NY	14215
Evergreen Healthcare	12040 NE 128th St., MS 21		Kirkland	WA	98034

Facility Name	Address 1	Address 2	City	State	Zip Code
Excela Health Westmoreland Hospital	532 West Pittsburgh Street		Greensburg	PA	15601
Exempla Good Samaritan Medical Center	2420 W. 26th Avenue Building D Suite 100		Denver	CO	80211
Exempla Lutheran Medical Center	2420 W. 26th Avenue Building D Suite 140		Denver	CO	80211
Exempla Saint Joseph Hospital	2420 W. 26th Avenue Building D Suite 140		Denver	CO	80211
Exeter Hospital	5 Alumni Drive		Exeter	NH	03833
F.E. Lajam, MD PC	140-04 58th Road		Flushing	NY	11355
Fairfield Cardiac Cath Labs	3000 Mack Road	Suite 200	Fairfield	OH	45014
Fairfield Medical Center	401 N. Ewing Street		Lancaster	OH	43130
Fairview Hospital	18101 Lorain Road #329		Cleveland	OH	44111
Fairview Park Hospital	PO Box 1408		Dublin	GA	31021
Fairview Southdale Hospital	6401 France Avenue South		Edina	MN	55435
Faith Regional Health Services	2700 W. Norfolk Avenue		Norfolk	NE	68701
Fawcett Memorial Hospital	21298 Olean Boulevard		Port Charlotte	FL	33949-4960

Facility Name	Address 1	Address 2	City	State	Zip Code
Faxton – St. Luke's Campus	1656 Champlin Avenue		New Hartford	NY	13413
FirstHealth Moore Regional Hospital	155 Memorial Drive		Pinehurst	NC	28374
Fisher-Titus Medical Center	272 Benedict Avenue		Norwalk	OH	44857
Flagler Hospital	400 Health Park Blvd.		St. Augustine	FL	32086
Flagstaff Medical Center	1200 N. Beaver Street		Flagstaff	AZ	86001-3198
Fletcher Allen Health Care	111 Colchester Avenue		Burlington	VT	05401
Florida Hospital	601 East Rollins Street	Box 99	Orlando	FL	32803
Florida Hospital Deland	701 West Plymouth Avenue		Deland	FL	32720
Florida Hospital Fish Memorial	1055 Saxon Boulevard		Orange City	FL	32763
Florida Hospital Ormond Memorial	875 Sterthaus Avenue		Ormond Beach	FL	32174
Florida Hospital Waterman, Inc.	1000 Waterman Way		Tavares	FL	32778
Florida Hospital Zephyrhills	5631 Glencrest Boulevard		Tampa	FL	33625-1008
Flowers Hospital	4370 West Main Street		Dothan	AL	36305

Facility Name	Address 1	Address 2	City	State	Zip Code
Floyd Medical Center	304 Turner McCall Boulevard		Rome	GA	30165
Floyd Memorial Hospital and Health Services	1850 State Street		New Albany	IN	47150
Forrest General Hospital	6051 Highway 49 South		Hattiesburg	MS	39404-6389
Forsyth Medical Center	3333 Silas Creek Pkwy	Clinical Improvement Box 102	Winston-Salem	NC	27103
Fort Sanders Regional Medical Center	1901 Clinch Avenue		Knoxville	TN	37916-2307
Fort Walton Beach Medical Center	1000 Mar Walt Drive		Fort Walton Beach	FL	32547
Forum Health – Northside Medical Center	500 Gypsy Lane		Youngstown	OH	44501-0240
Fountain Valley Regional Hosp	17100 Euclid Street		Fountain Valley	CA	92708-4004
Frankfort Regional Medical Center	299 Kings Daughter Drive		Frankfort	KY	40601
Franklin Square Hospital	9000 Franklin Square Drive		Baltimore	MD	21237
Frederick Memorial Hospital	400 W. Seventh Street		Frederick	MD	21710
Freeman Hospital	1102 W. 32nd Street	1102 W. 32nd Street	Joplin	MO	64804

Facility Name	Address 1	Address 2	City	State	Zip Code
Fremont Area Medical Center	450 East 23^{rd} Street		Fremont	NE	68025
French Hospital Medical Center	1911 Johnson Avenue		San Luis Obispo	CA	93401
Fresno Community Hospital and Medical Center	2823 Fresno Street		Fresno	CA	93721
Fresno Heart Hospital	15 East Audubon Drive		Fresno	CA	93720
Froedtert Hospital	9200 W. Wisconsin Avenue		Milwaukee	WI	53226
Frye Regional Medical Center	420 N. Center Street		Hickory	NC	28601
Gadsden Regional Medical Center	1007 Goodyear Avenue		Gadsden	AL	35903
Galichia Heart Hospital	2610 N. Woodlawn Boulevard		Wichita	KS	67220
Garden City Hospital	6245 Inkster Road		Garden City	MI	48135-4001
Garden Grove Hospital	12601 Garden Grove Boulevard		Garden Grove	CA	92843
Gaston Memorial Hospital	2525 Court Drive		Gastonia	NC	28054
Gateway Medical CenterGateway Health System	651 Dunlop Lane		Clarksville	TN	37043
Gateway Regional Medical Center	2100 Madison Avenue		Granite City	IL	62040
Geisinger Medical Center	100 North Academy Avenue		Danville	PA	17822-2160

Facility Name	Address 1	Address 2	City	State	Zip Code
Geisinger Wyoming Valley Medical Center	100 North Academy Avenue		Danville	PA	17822-2160
Genesis Healthcare System	800 Forest Avenue		Zanesville	OH	43701
Genesis Medical Center	1236 East Rusholme Street	Suite 190	Davenport	IA	52803-2459
Genesis Medical Center, Illini Campus	1236 East Rusholme Street	Suite 190	Davenport	IA	52803-2459
Genesys Regional Medical Center	One Genesys Parkway		Grand Blanc	MI	48439
Georgetown University Hospital	3800 Reservoir Road NW		Washington	DC	20007
Gerald Champion Reginal Medical	2669 North Scenic Drive		Alamogordo	NM	88310
Glenbrook Hospital	2100 Pfingsten Road		Evanston	IL	60026
Glendale Adventist Medical Center	1509 Wilson Terrace		Glendale	CA	91206
Glendale Memorial Hospital and Health Center	1420 S. Central Avenue		Glendale	CA	91204
Glens Falls Hospital	100 Park Street		Glens Falls	NY	12801
Glenwood Regional Medical Center	503 McMillan Road		West Monroe	LA	71294
Good Samaritan	407 14th Avenue SE		Puyallup	WA	98371
Good Samaritan Heart Center	520 South 7th Street		Vincennes	IN	47591

Facility Name	Address 1	Address 2	City	State	Zip Code
Good Samaritan Hospital and Health Center	2222 Philadelphia Drive		Dayton	OH	45406
Good Samaritan Hospital	1225 Wilshire Blvd		Los Angeles	CA	90017
Good Samaritan Hospital	2425 Samaritan Drive	2425 Samaritan Drive	San Jose	CA	95124
Good Samaritan Hospital	605 N. 12th Street		Mount Vernon	IL	62864
Good Samaritan Hospital	3815 Highland Avenue		Downers Grove	IL	60515
Good Samaritan Hospital	10 East 31st Street		Kearney	NE	68847
Good Samaritan Hospital	255 Lafayette Ave		Suffern	NY	10901
Good Samaritan Hospital	375 Dixmyth Avenue		Cincinnati	OH	45220-2489
Good Samaritan Hospital Cardiology	1000 Montauk Highway		West Islip	NY	11795
Good Samaritan Hospital of Maryland	5601 Loch Raven Boulevard		Baltimore	MD	21239
Good Samaritan Medical Center	1309 North Flagler Drive		West Palm Beach	FL	33401
Good Samaritan Regional Medical Center	3600 NW Samaritan Drive		Corvallis	OR	97330

Facility Name	Address 1	Address 2	City	State	Zip Code
Good Shepherd Medical Center	700 E Marshall		Longview	TX	75601
Goshen General Hospital	200 High Park Avenue		Goshen	IN	46526
Governor Juan F. Luis Hospital & Medical Center	4007 Estate Diamond Ruby		Christiansted	VI	00820
Graduate Hospital	1800 Lombard Street		Philadelphia	PA	19146
Grady Health System	80 Jessie Hill Jr. Drive SE		Atlanta	GA	30303
Grady Memorial Hospital	561 West Central Avenue		Delaware	OH	43015-1489
Grand Strand Regional Medical Center	809 82nd Parkway		Myrtle Beach	SC	29572
Grandview Medical Center	405 W. Grand Avenue		Dayton	OH	45405
Grant Medical Center	111 S. Grant Avenue		Columbus	OH	43215
Gratiot Medical Center	4401 Campus Ridge Drive		Midland	MI	48670
Great Plains Regional Medical Center	Box 2339		Elk City	OK	73648
Great River Medical Center	1221 S. Gear Avenue		West Burlington	IA	52655
Greater Baltimore Medical Center	GBMC – Cardiac Cath Lab	6701 N. Charles Street	Towson	MD	21204

Facility Name	Address 1	Address 2	City	State	Zip Code
Greene Memorial Hospital	1141 N. Monroe Drive		Xenia	OH	45385
Greenview Regional Hospital	1801 Ashley Circle		Bowling Green	KY	42104
Greenville Memorial Hospital	701 Grove Road		Greenville	SC	29605
Greenwich Hospital	5 Perryridge Road		Greenwich	CT	06830
Gulf Coast Medical Center	449 W. 23rd Street		Panama City	FL	32406-5309
Gulf Coast Medical Center	1400 Highway 59 Bypass		Wharton	TX	77488
Gulf Coast Medical Center (formerly Southwest Regional)	9981 S. Healthpark Drive		Fort Meyers	FL	33908
Gundersen Lutheran Medical Center, Inc.	1900 South Avenue	H06-004	LaCrosse	WI	54601
Gwinnett Hospital System	1000 Medical Center Boulevard		Lawrenceville	GA	30045
Hackensack University Medical Center	30 Prospect Avenue		Hackensack	NJ	07601
Hahnemann University Hospital	230 N. Broad Street		Philadelphia	PA	19102
Halifax Medical Center	303 N. Clyde Morris Boulevard		Daytona Beach	FL	32114-2732
Halifax Regional Hospital	2204 Wilborn Avenue		South Boston	VA	24592

Facility Name	Address 1	Address 2	City	State	Zip Code
Hamilton Medical Center	1200 Memorial Drive		Dalton	GA	30720
Hamot Medical Center	201 State Street		Erie	PA	16550
Hanford Community Medical Center	450 N. Greenfield Avenue		Handford	CA	93230
Hannibal Regional Hospital	6000 Hospital Drive	PO Box 551	Hannibal	MO	63401
Harbor Hospital Center	3001 S. Hanover Street		Baltimore	MD	21225
Hardin Memorial Hospital	913 N Dixie Avenue		Elizabethtown	KY	42701
Harlingen Medical Center	5501 South Expressway 77		Harlingen	TX	78550
Harper University Hospital	3990 John R. Street		Detroit	MI	48201
Harris County Hospitals	1504 Taub Loop		Houston	TX	77030
Harris Methodist Fort Worth	1301 Pennsylvania Avenue		Fort Worth	TX	76104
Harris Methodist HEB	1600 Hospital Parkway		Bedford	TX	76022
Harrison Medical Center	2520 Cherry Avenue		Bremerton	WA	98310
Hartford Hospital	80 Seymour Street		Hartford	CT	06102-8000
Harton Regional Medical Center	1801 N. Jackson Street		Tullahoma	TN	37388

Facility Name	Address 1	Address 2	City	State	Zip Code
Havasu Regional Medical Center	101 Civic Center Lane		Lake Havasu City	AZ	86403
Hawaii Medical Center East, LLC	2230 Liliha Street		Honolulu	HI	96817
Hawaii Medical Center West	91-2141 Fort Weaver Road		Ewa Beach	HI	96706
Hays Medical Center	2220 Canterbury Road		Hays	KS	67601
Hazard ARH Regional Medical Center	100 Medical Center Drive		Hazard	KY	41701
Health Care Authority for Baptist Health	2105 East South Boulevard		Montgomery	AL	36116
Heart and Lung Clinic	900 East Broadway Box 5510		Bismark	ND	58502
Heart Center of Indiana	8333 Nabb Road Suite 330	Suite 330	Indianapolis	IN	46290
Heart Hospital of Austin	3801 N. Lamar Boulevard		Austin	TX	78756
Heart Hospital of Lafayette	1105 Kaliste Saloom Road		Lafayette	LA	70508
Heart Hospital of New Mexico	8719 Springhill Drive NW		Albuqerque	NM	87114
Heart of Florida Regional Medical Center	40100 Highway 27		Davenport	FL	33837
Heart of Lancaster Regional Medical Center	250 College Avenue		Lancaster	PA	17604

Facility Name	Address 1	Address 2	City	State	Zip Code
Heartland Regional Medical Center	3333 W. Deyoung Street		Marion	IL	62959
Heartland Regional Medical Center	The Heart Center – Cardiac Cath Lab	5325 Faraon Street	Saint Joseph	MO	64506-3373
Helen Ellis Memorial	1395 South Pinella Avenue		Tarpon Springs	FL	34689
Helen Keller Hospital	1300 South Montgomery Avenue		Sheffield	AL	35660
Hemet Valley Medical Center	1117 E. Devonshire Avenue		Hemet	CA	92543
Hendersonville Medical Center	355 New Shackle Island Road		Hendersonville	TN	37075
Hendrick Medical Center	1900 Pine Street		Abilene	TX	79601
Hennepin County Medical Center	701 Park Avenue		Minneapolis	MN	55415-1829
Henrico Doctors Hospital	1602 Skipwith Road	Cardiac Cath Lab	Richmond	VA	23229
Henry Ford Hospital	2799 W. Grand Boulevard	K-14	Detroit	MI	48202
Henry Ford Macomb	15855 Nineteen Mile Road		Clinton Township	MI	48038
Henry Ford Macomb-Warren	13355 East Ten Mile Road		Warren	MI	48089
Henry Mayo Newhall Memorial Hospital	23845 McBean Parkway		Valencia	CA	91350
Henry Medical Center, Inc.	1133 Eagles Landing Parkway		Stockbridge	GA	30281

Facility Name	Address 1	Address 2	City	State	Zip Code
Hialeah Hospital	651 East 25th Street		Hialeah	FL	33013
High Point Regional Hospital	601 N. Elm Street		High Point	NC	27261
Highland Park Hospital	718 Glenview Avenue		Highland Park	IL	60035
Hillcrest Baptist Medical Center	100 Hillcrest Medical Boulevard		Waco	TX	76708
Hillcrest Hospital	6780 Mayfield Road		Mayfield Heights	OH	44124
Hillcrest Medical Center	1120 S. Utica Avenue	3 West	Tulsa	OK	74104
Hilton Head Regional Medical Center	25 Hospital Center Boulevard		Hilton Head	SC	29925
HMA-Physician Management Region 25 Disb. Acct. (Physician's Regional)	6101 Pine Ridge Road		Naples	FL	34119
Hoag Memorial Hospital Presbyterian	One Hoag Drive	PO Box 6100	Newport Beach	CA	92658
Holland Community Hospital	602 Michigan Avenue		Holland	MI	49423
Holmes Regional Medical Center	1350 South Hickory Street		Melbourne	FL	32901
Holy Cross Hospital	4795 N. Federal Highway		Ft. Lauderdale	FL	33308

Facility Name	Address 1	Address 2	City	State	Zip Code
Holy Cross Hospital Medical Library	1500 Forest Glen Road		Silver Spring	MD	20910
Holy Spirit Health System	503 N 21st Street	Heart Center Admin.	Camp Hill	PA	17011-2204
Holzer Cardiovascular Institute	90 Jackson Pike		Gallipolis	OH	45631
Hopkins County Memorial Hospital	115 Airport Road		Sulphur Springs	TX	75482
Hospital of St. Raphael	Cardiac Cath Lab, 1450 Chapel Street		New Haven	CT	06511
Hospital of the University of Pennsylvania	9011 E. Gates 3400 Spruce Street		Philadelphia	PA	19104
Houston Northwest Medical Center Accounts Payable	710 FM 1960 Road West		Houston	TX	77090
Howard County General Hospital	5755 Cedar Lane		Columbia	MD	21044
Howard Regional Health System	3500 South LaFountain Street		Kokomo	IN	46904-9011
Howard University Hospital	2041 Georgia Avenue		Washington	DC	20060
Hualapai Mountain Medical Center	3801 Santa Rosa Drive		Kingman	AZ	86401

Facility Name	Address 1	Address 2	City	State	Zip Code
Huguley Memorial Medical Center	11801 South Freeway		Ft. Worth	TX	76115
Huntington Hospital	100 W. California Boulevard		Pasadena	CA	91109
Huntington Hospital	270 Park Avenue	Arrhyyhmia Services, Huntington Hospital	Huntington	NY	11743
Huntsville Hospital	101 Sivley Road		Huntsville	AL	35801
Hurley Medical Center	1 Hurley Plaza		Flint	MI	48503
Huron Valley Sinai Hospital	1 William Carls Drive		Commerce Township	MI	48382
Iberia Medical Center	2315 East Main Street		New Iberia	LA	70560
Immanuel-St. Joseph's Hospital	1025 Marsh Street		Mankato	MN	56001
Indian Path Medical Center(Mountain States Health)	400 N. State of Franklin Rd		Johnson City	TN	24210
Indian River Medical Center	1000 36th Street		Vero Beach	FL	32960
Indiana Heart Institute	8333 Naab Rd	Suite 330	Indianapolis	IN	46260
Indiana Regional Medical Center Cardiology Department	835 Hospital Road		Indiana	PA	15701
Ingalls Hospital	One Ingalls Drive		Harvey	IL	60426

Facility Name	Address 1	Address 2	City	State	Zip Code
Ingham Regional Medical Center	401 W. Greenlawn Avenue		Lansing	MI	48910
Innovis Health	3000 32nd Avenue SW		Fargo	ND	58104
Inova Alexandria Hospital	3289 Woodburn Road		Falls Church	VA	22042
Inova Fairfax Hospital/Inova Heart & Vascular Institute	3300 Gallows Road		Falls Church	VA	22042
Inova Loudoun Hospital	3289 Woodburn Road	Suite 235	Falls Church	VA	22042
Integris Baptist Medical Center	3433 NW 56th Street, Suite 805		Oklahoma City	OK	73112
Integris Health	600 South Monroe Street		Enid	OK	73701
Integris Southwest Medical Center	4401 South Western Avenue		Oklahoma City	OK	73109
Interfaith Medical Center	1545 Atlantic Avenue		Brooklyn	NY	11213
Intermountain Medical Center	5121 Cottonwood Street		Murray	UT	84157-7000
Iowa Lutheran Hospital	700 E. University Avenue		Des Moines	IA	50316
Iowa Methodist Medical Center	700 E. University Avenue		Des Moines	IA	50316
Iredell Memorial Hospital	557 Brookdale Drive		Statesville	NC	28687
Iroquois Memorial Hospital	200 Fairman Avenue		Watseka	IL	60970

Facility Name	Address 1	Address 2	City	State	Zip Code
Jackson Hospital and Clinic	1725 Pine Street		Montgomery	AL	36106
Jackson Madison General Hospital	620 Skyline Drive		Jackson	TN	38301
Jackson North Medical Center	1611 NW 12th Avenue		Miami	FL	33136
Jacobi Medical Center	1400 Pelham Parkway		Bronx	NY	10461-1101
Jamaica Hospital Medical Center	8900 Van Wyck Expressway		Jamaica	NY	11418
Jane Phillips Memorial Medical Center	3500 Frank Phillips Boulevard		Bartlesville	OK	74006
Jeanes Hospital	7600 Central Avenue		Philadelphia	PA	19111
Jeff Anderson Regional Medical Center	2124 14th Street		Meridian	MS	39301
Jefferson Memorial Hospital	PO BOX 350		Crystal City	MO	63019
Jefferson Regional Medical Center	1600 West 40th Avenue		Pine Bluff	AR	71603
Jefferson Regional Medical Center	PO Box 18119 565 Coal Valley Road		Pittsburgh	PA	15236-0119
Jennie Edmundson Memorial Hospital	933 E. Pierce Street		Council Bluffs	IA	51503
Jersey City Medical Center	355 Grand Street		Jersey City	NJ	07302
Jersey Shore University Medical Center	1945 State Route 33		Neptune	NJ	07753

Facility Name	Address 1	Address 2	City	State	Zip Code
Jewish Hospital	4777 East Galbraith Road		Cincinnati	OH	45236
Jewish Hospital	200 Abraham Flexner Way		Louisville	KY	40202
JFK Medical Center	5631 Glencrest Boulevard		Tampa	FL	33625-1008
John C. Lincoln Hospital – Deer Valley	19829 N. 27th Ave.		Phoenix	AZ	85027-4002
John C. Lincoln Hospital – North Mountain	250 E. Dunlap Avenue		Phoenix	AZ	85020-2871
John F. Kennedy Memorial Hospital	47-111 Monroe Street		Indio	CA	92201
John Muir Medical Center – Concord Campus	1601 Ygnacio Valley Road		Walnut Creek	CA	94550
John Muir – Walnut Creek	1601 Ygnacio Valley Road		Walnut Creek	CA	94550
Johns Hopkins Bayview Medical Center	4940 Eastern Avenue		Baltimore	MD	21224
Johns Hopkins Hospital	600 N. Wolfe Street		Baltimore	MD	21287
Johnson City Medical Center Hosp	400 N State of Franklin		Johnson City	TN	37604
Jordan Valley Hospital	3590 W. 9000 S		West Jordan	UT	84088

Facility Name	Address 1	Address 2	City	State	Zip Code
Kadlec Medical Center	888 Swift Boulevard		Richland	WA	99352
Kaiser Foundation Hospital	1526 Edgemont Street		Los Angeles	CA	90027
Kaiser Foundation Hospital	6600 Bruceville Road		Sacramento	CA	95823
Kaiser Permanente – Moanalua Medical Center	3288 Moanalua Road		Honolulu	HI	96819
Kaiser Permanente – Panorama City	13652 Cantara Street		Panorama City	CA	91402
Kaiser Permanente – San Diego Medical Center	4647 Zion Avenue		San Diego	CA	92120
Kaiser Permanente Medical Center	2350 Geary Boulevard	1st Floor – CV Surgery	San Francisco	CA	94115
Kaiser Permanente Medical Center – Health Sciences Library	9400 E. Rosencrans Avenue		Bellflower	CA	90706
Kaiser Permanente Medical Center – Santa Clara	700 Lawrence Expressway	Department 212	Santa Clara	CA	95051
Kaiser Sunnyside Medical Center	10180 SE Sunnyside Road		Clackamas	OR	97015
Kansas Heart Hospital	3601 N Webb Road		Wichita	KS	67226
Kansas Heart Hospital	3601 N Webb Road		Wichita	KS	67226
Kansas Medical Center	1124 West 21st Street		Andover	KS	67002
Kansas University Hospital Authority	3901 Rainbow Boulevard		Kansas City	KS	66160

Facility Name	Address 1	Address 2	City	State	Zip Code
Kapi'olani Medical Center Pali Momi	98-1079 Moanalua Road		Aiea	HI	96701
Katherine Shaw Bethea Hospital	403 E. First Street		Dixon	IL	61021
Kaweah Delta Hospital District	Kaweah Delta Hospital District	400 W. Mineral King Avenue	Visalia	CA	93291
Kendall Regional Medical Center	5631 Glencrest Boulevard		Tampa	FL	33625-1008
Kershaw County Medical Center	1315 Roberts Street		Camden	SC	29020
Kettering Medical Center	3535 Southern Boulevard		Kettering	OH	45429
Kingman Regional Medical Center	3269 Stockton Hill Road		Kingman	AZ	86401
Kings Daughters Hospital	1901 Southwest H.K. Dodgen Loop		Temple	TX	76502
Kings Daughters Medical Center	2201 Lexington Avenue		Ashland	KY	41101
Kingwood Medical Center	22999 Highway 59 N		Kingwood	TX	77339
Knox Community Hospital	1330 Coshocton Road		Mount Vernon	OH	43050
Kootenai Medical Center	2003 Lincoln Way		Coeur d' Alene	ID	83814
Kuakani Medical Center	347 N. Kuakani Street		Honolulu	HI	96817

Facility Name	Address 1	Address 2	City	State	Zip Code
La Paz Regional Hospital	1200 W. Mohave Road		Parker	AZ	85344
Lafayette General Medical Center	1214 Coolidge Avenue		Lafayette	LA	70505
Lahey Clinic	41 Mall Road		Burlington	MA	01805
Lake Charles Memorial Hospital	1701 Oak Park Boulevard		Lake Charles	LA	70601
Lake City Medical Center	340 NW Commerce Boulevard		Lake City	FL	32055
Lake Cumberland Regional Hospital	305 Langdon Street		Somerset	KY	42503
Lake Hospital System	36000 Euclid Avenue		Willoughby	OH	44094
Lake Pointe Medical Center	6800 Scenic Drive		Rowlett	TX	75088
Lake Regional Health System	54 Hospital Drive		Osage Beach	MO	65065
Lakeland Hospital	1234 Napier Avenue		Saint Joseph	MI	49085-2112
Lakeland Regional Medical Center	1324 Lakeland Hills Boulevard		Lakeland	FL	33804
Lakeside Hospital	6901 N. 72nd Street Suite 3300		Omaha	NE	68122
Lakeview Regional Medical Center	95 East Fairway Drive		Covington	LA	70433-7500
Lakeway Regional Hospital	726 McFarland Street		Morristown	TN	37814
Lakewood Hospital	14519 Detroit Avenue		Lakewood	OH	44107

Facility Name	Address 1	Address 2	City	State	Zip Code
Lakewood Ranch Medical Center	8330 Lakewood Ranch Boulevard		Bradenton	FL	34202
Lakewood Regional Medical Center	3700 East South Street		Lakewood	CA	90712
Lancaster Community Hosp	43830 North 10th Sreet West		Lancaster	CA	93534
Lancaster General Hospital	555 N. Duke Street PO Box 3555		Lancaster	PA	17604-3555
Lancaster Regional Medical Center	250 College Avenue		Lancaster	PA	17604
Landmark Medical Center	115 Cass Avenue		Woonsocket	RI	02895
Lane Regional Medical Center	6300 Main Street		Zachary	LA	70791
Lankenau Hospital	Suite 557 Lankenau MOB East	100 Lancaster Avenue	Wynnewood	PA	19096
La Porte Hospital	1007 Lincolnway		La Porte	IN	46352
Laredo Medical Center	1720 Bustamante Street		Laredo	TX	78044
Largo Medical Center	201 14th Street SW		Largo	FL	33770
Las Colinas Medical Center	6800 North MacArthur Boulevard		Irving	TX	75039
Las Palmas Medical Center	1801 N. Oregon Street		El Paso	TX	79902
Latrobe Hospital	One Mellon Way		Latrobe	PA	15601
Lawnwood Medical Center	1700 S. 23rd Street		Fort Pierce	FL	34950

Facility Name	Address 1	Address 2	City	State	Zip Code
Lawrence & Memorial Hospital	365 Montauk Avenue		New London	CT	06375
Lawrence Hospital	55 Palmer Avenue		Broxville	NY	10708-3491
Lee Memorial Health System-Cape Coral Hospital	9981 S. Healthpark Drive		Fort Myers	FL	33908
Lee Memorial Health System-Health Park Med Center	9981 S. Healthpark Drive		Fort Myers	FL	33908
Lee's Summit Medical Center	2100 SE Blue Parkway		Lee's Summit	MO	64063
Leesburg Regional Medical Center	600 East Dixie Avenue		Leesburg	FL	34748
Legacy Emanuel Hospital	1919 NW Lovejoy Street		Portland	OR	97209
Legacy Good Samaritan Hospital	1919 NW Lovejoy Street		Portland	OR	97209
Legacy Meridian Park Hospital	1919 NW Lovejoy Street		Portland	OR	97209
Legacy Salmon Creek Hospital	1919 NW Lovejoy Street		Portland	OR	97209
Lehigh Regional Medical Center	1500 Lee Boulevard		Lehigh Acres	FL	33963
Lehigh Valley Hospital	1200 S. Cedar Crest Boulevard	Jaindl Pavilion 1st Floor	Allentown	PA	18103

Facility Name	Address 1	Address 2	City	State	Zip Code
Lehigh Valley Hospital – Muhlenberg	2545 Schoenersville Road	Invasive Cardiology 3rd Floor	Bethlehem	PA	18017-7330
Lenoir Memorial Hospital	100 Airport Road		Kinston	NC	28501
Lenox Hill Heart and Vascular Institute of New York	100 East 77th Street		New York	NY	10021
Lewis Gale Medical Center	1900 Electric Road		Salem	VA	24153
Lexington Medical Center	2720 Sunset Boulevard		West Columbia	SC	29169
Liberty Hospital	2525 Glenn Hendren Drive		Liberty	MO	64068
Licking Memorial Hospital	1320 W. Main Street		Newark	OH	43055
Lima Memorial Hospital	1001 Bellefontaine Avenue		Lima	OH	45804
Little Company of Mary Hospital	4101 Torrance Boulevard		Torrance	CA	90503
Little Company of Mary Hospital	2800 W. 95th Street		Evergreen Park	IL	60805
Logan General Hospital, LLC	20 Hospital Drive		Logan	WV	25601
Loma Linda University Medical Center	11234 Anderson Street Room 2431		Loma Linda	CA	92354
Long Beach Memorial Medical Center	2801 Atlantic Avenue		Long Beach	CA	90806

Facility Name	Address 1	Address 2	City	State	Zip Code
Long Island College Hospital	339 Hicks Street		Brooklyn	NY	11201
Long Island Jewish Medical Center	270-05 76th Avenue		New Hyde Park	NY	11040
Longmont United Hospital	1950 Mountain View Avenue		Longmont	CO	80501
Longview Regional Medical Center	PO Box 14000		Longview	TX	75607
Los Alamitos Medical Center	3751 Katella Avenue		Los Alamitos	CA	90720
Los Robles Hospital & Medical Center	215 W. Janss Road		Thousand Oaks	CA	91360-1899
Louisiana Medical Center and Heart Hospital	64030 Louisiana Highway 434		Lacombe	LA	70445
Lourdes Hospital	1530 Lone Oak Road		Paducah	KY	42003
Lovelace Medical Center	601 Martin Luther King Jr. Avenue NE		Albuquerque	NM	87102
Lowell General Hospital	295 Varnum Avenue		Lowell	MA	01854
Lower Bucks Hospital	501 Bath Road		Bristol	PA	19007
Lower Keys Medical Center	5900 College Road		Key West	FL	33040
Loyola University Medical Center	2160 S. First Avenue	Rm. 1318 Bldg. 104 Att: Mike	Maywood	IL	60153
LSU Bogalusa Medical Center	433 Plaza Street		Bogalusa	LA	70427

Facility Name	Address 1	Address 2	City	State	Zip Code
Lubbock Heart Hospital	4810 N. Loop 289		Lubbock	LA	79416
Lutheran Hospital of Indiana	7950 W. Jefferson Boulevard		Fort Wayne	IN	46804
Lutheran Medical Center	150 55th Street		Brooklyn	NY	11220
Lynchburg General Hospital	1901 Tate Springs Road	Cardiac Cath Lab	Lynchburg	VA	24501-1167
MacNeal Hospital	3249 S. Oak Park Avenue		Berwyn	IL	60402
Magnolia Regional Health Center	611 Alcorn Drive		Corinth	MS	38834
Maimonides Medical Center Division of Cardiology	4802 10th Avenue		Brooklyn	NY	11219
Maine Medical Center	22 Bramhall Street		Portland	ME	04102
Mainland Medical Center	6801 Emmett F. Lowry Expressway		Texas City	TX	77591
Manatee Memorial Hospital	206 Second Street East		Bradenton	FL	34208
Marian Medical Center	1400 East Church Street		Santa Maria	CA	93454
Maricopa Integrated Health System	2601 E. Roosevelt Street		Phoenix	AZ	85008
Marin General Hospital	250 Bon Air Road		Greenbrae	CA	94904
Marion General Hospital	441 N. Wabash Avenue		Marion	IN	46952
Marion General Hospital	1000 McKinley Park Drive		Marion	OH	43302-6397

Facility Name	Address 1	Address 2	City	State	Zip Code
Marquette General Hospital	580 W. College Avenue		Marquette	MI	85724
Marshall Medical Center	2505 US Highway 431		Boaz	AL	35957
Marshall University School of Medicine	420 West Magnetic Street		Huntington	WV	25701
Martha Jefferson Hospital	459 Locust Avenue		Charlottesville	VA	22902
Martin Memorial Medical Center	PO Box 9010		Stuart	FL	34995
Mary Black Hospital	1700 Skylyn Drive		Spatanburg	SC	29307
Mary Greeley Medical Center	1111 Duff Avenue		Ames	IA	50010
Mary Hitchcock Memorial Hospital	One Medical Center Drive		Lebanon	NH	03756
Mary Immaculate Hospital	2 Bernadine Drive		Newport News	VA	23602-4499
Mary Rutan Hospital	205 Palmer Avenue		Bellefontaine	OH	43311
Mary Washington Hospital	1001 Sam Perry Boulevard		Fredericksburg	VA	22401
Massachusetts General Hospital	55 Fruit Street		Boston	MA	02114
Mat-Su Regional Medical Center	2500 S. Woodworth Loop		Palmer	AK	99645
Maui Memorial Medical Center	221 Mahalani Street		Wailuku	HI	96793

Facility Name	Address 1	Address 2	City	State	Zip Code
Maury Regional Hospital	1224 Trotwood Avenue		Columbia	TN	38401
Mayo Clinic	4500 San Pablo Road		Jacksonville	FL	32216
Mayo Clinic Arizona	5777 E. Mayo Boulevard		Phoenix	AZ	85054
Mayo Clinic – St. Mary's Hospital	1216 2nd Street SW		Rochester	MN	55902
McAlester Regional Health Center	1 Clark Bass Boulevard		McAlester	OK	74501
McAllen Medical Center	301 W. Expressway 83		McAllen	TX	78503
MCG Health Inc.	1120 15th Street BBR-8521		Augusta	GA	30912
McKay-Dee Hospital Center	4401 Harrison Boulevard		Ogden	UT	84405
McKee Medical Center	2000 Boise Avenue		Loveland	CO	80538
Mclaren Regional Medical Center	401 S. Ballenger Highway		Flint	MI	48532
McLeod Regional Medical Center	555 E. Chaves Street		Florence	SC	29501
Mease Countryside Hospital	300 Pinellas Street		Clearwater	FL	33756
Mease Dunedin Hospital	300 Pinellas Street	MS 73	Clearwater	FL	33756
Med Central Mansfield	335 Glessner Avenue		Mansfield	OH	44903

Facility Name	Address 1	Address 2	City	State	Zip Code
Medcenter One	300 N. 7th Street		Bismarck	ND	58501
Medical Center at Bowling Green	250 Park Street		Bowling Green	KY	42101
Medical Center Hospital	500 W. 4th Street		Odessa	TX	79760
Medical Center of Arlington	3301 Matlock Road		Arlington	TX	76015
Medical Center of Aurora	1501 S. Potomac Street		Aurora	CO	80012
Medical Center of Central Georgia	777 Hemlock Street		Macon	GA	31208
Medical Center of Louisiana at UMOB	2025 Gravier Suite # 708		New Orleans	LA	70112
Medical Center of McKinney	4500 Medical Center Drive		McKinney	TX	75069
Medical Center of Plano	3901 W. 15th Street		Plano	TX	75075-7738
Medical Center of Southeastern Oklahoma	1800 University Boulevard		Durant	OK	74701
Medical Center of the Rockies	2500 Rocky Mountain Avenue		Loveland	CO	80538
Medical City Dallas Hospital	7777 Forest Lane		Dallas	TX	75230
Medical University of South Carolina	25 Countenay Drive		Charleston	SC	29425-2110
Melbourne Same Day Surgery	1035 S. Apollo Boulevard		Melbourne	FL	32901

Facility Name	Address 1	Address 2	City	State	Zip Code
Memorial Health System	1400 E. Boulder Street		Colorado Springs	CO	80909-5599
Memorial Health University Medical Center	Cardiac Cath Lab Memorial Health University Medical Center	4700 Waters Avenue	Savannah	GA	31404
Memorial Hermann Hospital	6411 Fanin Street		Houston	TX	77030
Memorial Hermann HVI South West	7787 Southwest Freeway		Houston	TX	77074
Memorial Hermann Memorial City Hospital	921 Gessner Road		Houston	TX	77024
Memorial Hermann Northeast	18951 Memorial North		Humble	TX	77338
Memorial Hermann Northwest Hospital	9401 SW Freeway		Houston	TX	77074
Memorial Hermann The Woodlands Hospital	9250 Pinecroft Drive		Spring	TX	77380
Memorial Hospital	800 West 9th Street		Jasper	IN	47546
Memorial Hospital	2525 Desales Avenue		Chattanooga	TN	37404-1102
Memorial Hospital at Gulfport	4500 13th Street	PO Box 1810	Gulfport	MS	39502
Memorial Hospital Carbondale	405 W. Jackson Street		Carbondale	IL	65902
Memorial Hospital Miramar	1901 SW 172 Avenue		Miramar	FL	33029

Facility Name	Address 1	Address 2	City	State	Zip Code
Memorial Hospital of Martinsville	320 Hospital Drive		Martinsville	VA	24112
Memorial Hospital of Rhode Island Brown University	111 Brewster Street		Pawtucket	RI	02860
Memorial Hospital of South Bend	615 N. Michigan Street		South Bend	IN	46601-1033
Memorial Hospital Pembroke/ South Broward Hospital	7800 Sheridan Street		Pembroke Pines	FL	33024
Memorial Hospital West/South Broward Hospital District	703 North Flamingo Road		Pembroke Pines	FL	33028
Memorial Hospital – Jacksonville	3625 University Boulevard South		Jacksonville	FL	32215
Memorial Medical Center	701 N. First Street		Springfield	IL	62781
Memorial Medical Center	2450 S. Telshor Boulevard		Las Cruces	NM	88011
Memorial Medical Center	1086 Franklin Street		Johnstown	PA	15905-4398
Memorial Medical Center Modesto	1700 Coffee Road		Modesto	CA	95355
Memorial Regional Hospital/South Broward Hospital	3501 Johnson Street		Hollywood	FL	33021
Menifee Valley Medical Center	28400 McCall Boulevard		SunCity	CA	92585

Facility Name	Address 1	Address 2	City	State	Zip Code
Menorah Medical Center	5721 West 119th Street		Overland Park	KS	66209
Mercy Fitzgerald Hospital	1500 Lansdowne Avenue		Darby	PA	19023
Mercy General Hospital – Sacramento	3939 J Street		Sacremento	Ca	95819
Mercy Gilbert Medical Center	3555 S. Val Vista Drive		Gilbert	AZ	85296
Mercy Health Partners	1500 E. Sherman Boulevard	Suite 334	Muskegon	MI	49444
Mercy Health Partners Hackley Campus	Westshore Professional Building	Suite 334	Muskegon	MI	49443
Mercy Health System of Northwestern Arkansas	2710 Rife Medical Lane		Rogers	AR	72758
Mercy Hospital	144 State Street		Portland	ME	04101
Mercy Hospital	2925 Chicago Avenue		Minneapolis	MN	55407
Mercy Hospital – Scranton	746 Jefferson Avenue		Scranton	PA	18501
Mercy Hospital & Medical Center	2525 South Michigan Avenue		Chicago	IL	60616-2477
Mercy Hospital Anderson	7500 State Road		Cincinnati	OH	45255

Facility Name	Address 1	Address 2	City	State	Zip Code
Mercy Hospital Attn.: Accounts Payable	3663 South Miami Avenue		Miami	FL	33133
Mercy Hospital of Buffalo	515 Abbott Road	Marion Building Suite 306	Buffalo	NY	14220
Mercy Hospital Attn: A/P	271 Carew Street PO Box 9012		Springfield	MA	01102
Mercy Iowa City	500 East Market Street		Iowa City	IA	52245
Mercy Medical Center	2700 Steward Parkway		Roseburg	OR	97470
Mercy Medical Center	801 5th Street		Sioux City	IA	51101
Mercy Medical Center	1111 6th Avenue		Des Moines	IA	51101
Mercy Medical Center	1320 Mercy Drive	Cardiology Management and Support 3C	Canton	OH	44708
Mercy Medical Center	301 St. Paul Place		Baltimore	MD	21202
Mercy Medical Center	2900 W. 9th Avenue	Suite 107	Oshkosh	WI	54904
Mercy Medical Center	701 10th Street SE		Cedar Rapids	IA	52403
Mercy Medical Center	1000 North Village Ave		Rockville Centre	NY	11571
Mercy Medical Center Redding	2175 Rosaline Avenue	PO Box 496009	Redding	CA	96049-6009
Mercy Medical Center St. Mary's	900 E. Oak Hill Avenue		Knoxville	TN	37917
Mercy Medical Center West	900 E. Oak Hill Avenue		Knoxville	TN	37917

Facility Name	Address 1	Address 2	City	State	Zip Code
Mercy Medical Center – North Iowa	1000 4th Street SW		Mason City	IA	50401
Mercy Memorial Health Center Sisters of Mercy	1011 14th Avenue NW		Ardmore	OK	73401
Mercy Regional Health Center	1823 College Avenue		Manhattan	KS	67218
Mercy Regional Medical Center	1010 Three Springs Boulevard		Durango	CO	81301
Mercy Regional Medical Center	800 East Main Street		Ville Platte	LA	70586
Mercy San Juan Hospital	3941 J Street		Sacremento	CA	95819
Mercy St. Vincent Medical Center	2222 Cherry Street	MOB #2 Suite 1250	Toledo	OH	43608
Meriter Hospital	202 South Park Street	10 Tower – Heart Center	Madison	WI	53715
Methodist Charlton Medical Center (Methodist Health System)	MHS Sam & Anne Kesner Heart Center	1441 N. Beckley Avenue	Dallas	TX	75203
Methodist Hospital	7700 Floyd Curl Drive		San Antonio	TX	78229
Methodist Hospital (Germantown Campus)	1265 Union Avenue		Memphis	TN	38104
Methodist Hospital (North Campus)	1265 Union Avenue		Memphis	TN	38104

Facility Name	Address 1	Address 2	City	State	Zip Code
Methodist Hospital	6500 Excelsior Boulevard 2nd Floor HVC		St. Louis Park	MN	55426
Methodist Hospital of South CA	300 W Huntington Drive		Arcadia	CA	91007-3402
Methodist Hospital Southlake Campus	8701 Broadway		Merrillville	IN	46410-7035
Methodist Lebonheur Health Care University Hospital (University Campus)	1265 Union Avenue		Memphis	TN	38104-3499
Methodist Medical Center of Illinois	221 NE Glen Oak Avenue		Peoria	IL	61636
Methodist Medical Center of Oak Ridge	990 Oak Ridge Turnpike		Oak Ridge	TN	37830
Methodist Speciality and Transplant Hospital	7700 Floyd Curl Drive		San Antonio	TX	78229
Methodist Stone Oak Hospital	1139 E. Sonterra Boulevard		San Antonio	TX	78258
Methodist Sugar Land Hospital	16655 Southwest Freeway		Sugar Land	TX	77479
Methodist Willowbrook Hospital	18220 Tomball Parkway		Houston	TX	77070
Metro Health Hospital	5900 Byron Center Road		Wyoming	MI	49519
MetroHealth Medical Center	2500 MetroHealth Drive		Cleveland	OH	44109
Metroplex Hospital	2201 S. Clear Creek Road		Killeen	TN	76549

Facility Name	Address 1	Address 2	City	State	Zip Code
MetroSouth Medical Center	12935 Gregory street		Blue Island	IL	60406-2470
Metropolitan Methodist Hospital	1310 McCullough Avenue		San Antonio	TX	78212
MetroWest Medical Center	115 Lincoln Street	Cardiac Cath Lab	Framingham	MA	01702-6327
Miami Valley Hospital	One Wyoming Street		Dayton	OH	45409
Michael Reese Hospital	2929 S. Ellis Avenue		Chicago	IL	60616
Middle Tennessee Medical Center	4220 Harding Road		Nashville	TN	37205
Midland Memorial Hospital	2200 W. Illinois Avenue c/o Heart Institute		Midland	TX	79701
Midlands Community Hospital	6901 N. 72nd Street		Omaha	NE	68122
MidMichigan Medical Center-Midland	4005 Orchard Drive		Midland	MI	48670
Midwest Regional Medical Center	2825 Parklawn Drive		Midwest City	OK	73110
Milford Regional Medical Center	14 Prospect Street		Milford	MA	01568
Millard Fillmore Hospital	3 Gates Circle	Room 4-EB-13	Buffalo	NY	14203
Millard Filmore Suburban	100 High Street		Buffalo	NY	14203
Mills-Peninsula Hospital	1783 Elcamino Real		Burlingame	CA	94010

Facility Name	Address 1	Address 2	City	State	Zip Code
Miriam Hospital	164 Summit Avenue		Providence	RI	02906
Mission Hospital Regional Medical Center	27700 Medical Center Road		Mission Viejo	CA	92691-6426
Mission Hospitals, Inc.	509 Biltmore Avenue		Asheville	NC	28801-4690
Mississippi Baptist Medical Center	1225 N State Street		Jackson	MS	39202-2097
Missouri Baptist Medical Center	3015 N. Ballas Road	3105 North Ballas Road	Saint Louis	MO	63131-2374
Moberly Regional Medical Center	1515 Union Avenue		Moberly	MO	65270
Mobile Infirmary Medical Center	5 Mobile Infirmary Circle		Mobile	AL	36607
Monongalia Genera; Hospital	1200 JD Anderson Drive		Morgantown	WV	26505
Monroe Hospital	4011 South Medical Park Boulevard		Bloomington	IN	47403
Montefiore Medical Center	111 E. 210th Street		Bronx	NY	10467
Montgomery General Hospital	18101 Prince Philip Drive		Olney	MD	20832
Morris Hospital	150 West High Street		Morris	IL	60450
Morristown Hamblem Hospital	908 West Fourth North St	PO Box 1178	Morristown	TN	37816-1178
Morristown Memorial Hospital	100 Madison Avenue		Morristown	NJ	07962

Facility Name	Address 1	Address 2	City	State	Zip Code
Morton Plant Hospital	300 Pinellas Street	MS 73	Clearwater	FL	33756
Morton Plant North Bay Hospital	300 Pinellas Street	MS 73	Clearwater	FL	33756
Moses Cone Health System	1200 N. Elm Street		Greensboro	NC	27401
Mother Frances Hospital	800 E. Dawson Street		Tyler	TX	75701
Mount Auburn Hospital	330 Mount Auburn Street	South 2 – Administration	Cambridge	MA	02138
Mount Carmel East	6150 East Broad Street	Office EB 148	Columbus	OH	42313
Mount Carmel St. Ann's Hospital	6150 East Broad Street	Office EB 148	Columbus	OH	42313
Mount Carmel West	6150 East Broad Street	Office EB 148	Columbus	OH	42313
Mount Clemens Regional Medical Center	1000 Harrington Street		Mount Clemens	MI	48043-2992
Mount Sinai Medical Center	4300 Alton Road		Miami Beach	FL	33140
Mountain View Regional Center	4311 E. Lohman Avenue		Las Cruces	NM	88011
Mountain Vista Medical Center	1301 S. Crismon Road		Mesa	AZ	85209

Facility Name	Address 1	Address 2	City	State	Zip Code
Mountainview Hospital	3100 N. Tenaya Way		Las Vegas	NV	89128
Munroe Regional Medical Center	1500 SW 1st Avenue PO Box 6000		Ocala	FL	34478
Munson Medical Center	1105 Sixth Street		Traverse City	MI	49684-2386
Muskogee Regional Medical Center	300 Rockefeller Drive		Muskogee	OK	74401
Nacogdoches Medical Center	4920 NE Stallings Drive		Nacogdoches	TX	75965
Naples Community Hospital	350 7th Street South		Naples	FL	34102
Nashoba Valley Medical Center	200 Groton Road		Ayer	MA	01432
National Park Medical Center	1910 Malvern Avenue		Hot Springs	AR	71901
NEA Baptist Memorial Hospital	3024 Stadium Boulevard		Jonesboro	AR	72401
Nebraska Heart Hospital	7500 South 91st Street		Lincoln	NE	68526
Nebraska Methodist Hospital	8303 Dodge Street		Omaha	NE	68114
New Hanover Regional Medical Center	2131 S. 17th Street		Wilmington	NC	28402
New York Community Hospital	2525 Kings Highway		Brooklyn	NY	11229

Facility Name	Address 1	Address 2	City	State	Zip Code
New York Hospital Medical Center of Queens Health Education Library	5645 Main Street	Floor 1	Flushing	NY	11355
New York Methodist Hospital	506 6th Street Brooklyn		New York City	NY	11215
New York Presbyterian Hospital	622West 168th Street	PH-2	New York City	NY	10032
Newark Beth Israel Medical Center	201 Lyons Avenue at Osborne Terrace		Newark	NJ	07112
Newton Medical Center	600 Medical Center Dr.		Newton	KS	67114
Niagara Falls Memorial Medical Center	571 10th Street		Niagara Falls	NY	14302
Nicholas H. Noyes Memorial Hospital	111 Clara Barton Street		Dansville	NY	14437
NIX Healthcare System	414 Navarro Street		San Antonio	TX	78205
Norman Regional Health System	PO Box 1308		Norman	OK	73070-1308
North Austin Medical Center	5103 Hereford Way		Austin	TX	78727
North Bay Medical Center	1200 B. Gale Wilson Boulevard		Fairfield	CA	94533
North Carolina Baptist Hospital	Medical Center Boulevard		Winston-Salem	NC	27157
North Central Baptist Hospital	730 North Main Avenue	Suite 424	San Antonio	TX	78205

Facility Name	Address 1	Address 2	City	State	Zip Code
North Colorado Medical Center	1801 16th Street		Greeley	CO	80631
North Cypress Medical Center	21214 Northwest Freeway		Cypress	TX	77429
North Florida Regional Medical Center	6500 Newberry Road		Gainesville	FL	32605
North Hills Hospital	4401 Booth Calloway Road		North Richland Hills	TX	76180
North Kansas City Hospital	2800 Clay Edward Drive		North Kansas City	MO	64116
North Memorial Medical Center	3300 Oakdale Avenue, N		Robbinsdale	MN	55422
North Mississippi Medical Center	830 S. Gloster Street		Tupelo	MS	38801
North Oaks Medical Center	15790 Paul Vega MD Drive		Hammond	LA	70403
North Shore Medical Center	1100 NW 95th Street		Miami	FL	33150
North Shore Medical Center FMC Campus	5000 W. Oakland Park Boulevard		Ft. Lauderdale	FL	33313
North Shore Medical Center – Salem Hospital	81 Highland Avenue	Davenport 5	Salem	MA	01970
North Shore University Hospital	300 Community Drive		Manhasset	NY	11030
North Suburban Medical Center	9191 Grant Street		Denver	CO	80229

Facility Name	Address 1	Address 2	City	State	Zip Code
North Vista Hospital	1409 E. Lake Mead Boulevard		North Las vegas	NV	89030
Northeast Alabama Regional Medical Center	400 East 10th Street		Anniston	AL	36202
Northeast Baptist Hospital	730 N. Main Avenue	Suite 424	San Antonio	TX	78205
Northeast Georgia Medical Center	743 Spring Street		Gainesville	GA	30501
NorthEast Medical Center	920 Church Street North		Concord	NC	28025
Northeast Methodist Hospital	12412 Judson Road		San Antonio	TX	78233
Northeast Regional Medical Center	315 S. Osteopathy		Kirksville	MO	63501
Northern Illinois Medical Center	4201 Medical Center Drive		McHenry	IL	60050
Northern Michigan Regional Hospital	416 Connable Avenue		Petoskey	MI	49770
Northern Nevada Medical Center	2375 E. Prater Way		Sparks	NV	89434
Northlake Medical Center	1455 Montreal Road		Tucker	GA	30084
Northridge Hospital Medical Center	18300 Roscoe Avenue		Northridge	CA	91325
Northshore Regional Medical Center	100 Medical Center Drive		Slidell	LA	70461
Northside Hospital-Atlanta	1000 Johnson Ferry Road		Atlanta	GA	30342

Facility Name	Address 1	Address 2	City	State	Zip Code
Northside Hospital	6000 49th Street, N		Pinellas Park	FL	33709
Northside Hospital – Forsyth	1200 Northside Forsyth Drive		Cumming	GA	30041
Northwest Community Hospital	800 W. Central Road		Arlington Heights	IL	60005
Northwest Hospital	1550 North 115th Street		Seattle	WA	98113
Northwest Hospital Center	5401 Old Court Road		Randallstown	MD	21133
Northwest Medical Center	2801 N. State Road 7		Margate	FL	33063
Northwest Medical Center	Northwest Medical Center	6200 N. La Cholla Boulevard	Tucson	AZ	85741
Northwest Medical Center – Bentonville	609 West Maple Street		Springdale	AR	72764
Northwest Arkansas Hospitals LLC, dba NMC	609 West Maple Street		Springdale	AR	72764
Northwest Mississippi Regional Medical Center	1970 Hospital Drive		Clarksdale	MS	38614
Northwestern Memorial Hospital	676 N. St. Clair Street	Suite 1700	Chicago	IL	60611
Norton Audubon	PO Box 35070		Louisville	KY	40232
Norton Hospital	PO Box 35070		Louisville	KY	40232
Norwalk Hospital	24 Stevens Street		Norwalk	CT	06856
NYU Medical Center	545 First Avenue		New York	NY	10016
Oak Hill Hospital	11375 Cortez Boulevard		Brooksville	FL	34613

Facility Name	Address 1	Address 2	City	State	Zip Code
Oakwood Hospital & Medical Center	18101 Oakwood Boulevard		Dearborn	MI	48124
Obici Hospital	2800 Godwin Boulevard		Suffolk	VA	23434
Ocala Regional Mecical Center	1431 SW First Avenue		Ocala	FL	34474
Ocean Springs Hospital	2809 Denny Avenue		Pascagoula	MS	39581
Ochsner Medical Center – Baton Rouge	17000 Medical Center Drive		Baton Rouge	LA	70816
Ochsner Medical Center – West Bank	2500 Belle Chasse Highway		Gretna	LA	70056
Ochsner Medical Center – Kenner (Kenner Regional Medical Center)	180 West Esplanade Avenue		Kenner	LA	70065
Ochsner Medical Foundation	1516 Jefferson Highway		Jefferson	LA	70003
Oconee Regional Medical Center	812 N. Cobb Street		Milledgeville	GA	31061
O'Connor Hospital	2105 Forest Avenue		San Jose	CA	95128
Odessa Regional Hospital	520 East 6th Street		Odessa	TX	79760
Ogden Regional Medical Center	5475 South 500 East		Ogden	UT	84403
Ohio Valley Medical Center	2000 Eoff Street		Wheeling	WV	26003

Facility Name	Address 1	Address 2	City	State	Zip Code
Oklahoma Heart Hospital	4050 W. Memorial Road		Oklahoma City	OK	73120
Oklahoma Heart Hospital-South	4050 W. Memorial Road		Oklahoma City	OK	73120
Oklahoma State University Medical Center	744 W. 9th Street	Mail Drop-H440	Tulsa	OK	74127
Olathe Medical Center	20333 W. 151st Street		Olathe	KS	66061-7211
Orange Coast Memorial Medical Center	9920 Talbert Ave.		Fountain Valley	CA	92708
Orange Regional Medical Center	60 Prospect Avenue		Middletown	NY	10940
Oregon Health & Science University	3181 SW Sam Jackson Road	UHS 32	Portland	OR	97239
Orlando Regional Medical Center	1414 Kuhl Avenue	MP 196	Orlando	FL	32806
Osceola Regional Medical Center	700 W. Oak Street		Kissimmee	FL	34745
OSF Saint Anthony Medical Center	5666 East State Street		Rockford	IL	61108
OSF Saint Joseph Medical Center	2200 E. Washington Street		Bloomington	IL	61701
OSF Saint Francis Medical Center	530 N.E. Glen Oak Avenue		Peoria	IL	61637

Facility Name	Address 1	Address 2	City	State	Zip Code
OU Medical Center	700 NE 13th Street		Oklahoma City	OK	73104
Our Lady of Bellefonte Hospital	1000 St. Christopher Drive		Ashland	KY	41101
Our Lady of Lourdes Medical Center	1600 Haddon Avenue		Camden	NJ	08103
Our Lady of Lourdes Regional Medical Center	611 Saint Landry Street PO Box 4027		Lafayette	LA	70506
Our Lady of The Lake Regional	5000 Hennessy Boulevard		Baton Rouge	LA	70808-4350
Our Lady of the Resurrection Medical Center	5645 W. Addison Street		Chicago	IL	60634
Overlake Hospital Medical Center	1035 116th Avenue NE		Bellevue	WA	98004
Overland Park Regional Medical Center/ Health Midwest	10500 Quivira Road		Overland Park	KS	66215
Owensboro Medical Health System	811 E. Parrish Avenue		Owensboro	KY	42303
Ozarks Medical Center	1100 Kentucky Avenue	PO Box 1100	West Plains	MO	65775
P and S Surgical Hospital	312 Grammont Street		Monroe	LA	71201

Facility Name	Address 1	Address 2	City	State	Zip Code
Palm Beach Gardens Medical Center	3360 Burns Road		Palm Beach Gardens	FL	33410
Palmetto General Hospital	2001 West 68th Street		Hialeah	FL	33016
Palmetto Health Heart Hospital	6 Richland Medical Park Drive	Suite 4525	Columbia	SC	29203
Palomar Medical Center	555 East Valley Parkway		Escondido	CA	92025
Palos Community Hospital	12251 S. 80th Avenue	Cardiovascular Services	Palos Heights	IL	60463-0930
Paoli Hospital	557 Lankenau MOB East	100 Lancaster Avenue	Wynnewood	PA	19096
Paradise Valley Hospital	3929 E. Bell Road		Phoenix	AZ	85032
Paradise Valley Hospital	2400 E. Fourth Street		National City	CA	91950
Paris Regional Medical Center	865 DeShong Drive		Powderly	TX	75432
Park Plaza Hospital	1313 Hermann Drive		Houston	TX	77004
Parkland Health and Hospital Systems	5201 Harry Hines Boulevard		Dallas	TX	75235
Parkridge Medical Center	2333 McCallie Avenue		Chattanooga	TN	37404
Parkview Hospital	2200 Randallia Drive		Fort Wayne	IN	46805
Parkview Medical Center	400 W. 16th Street		Pueblo	CO	81003

Facility Name	Address 1	Address 2	City	State	Zip Code
Parkway Regional Medical Center	160 NW 170th Street		North Miami	FL	33169
Parkwest Medical Center	9352 Parkwest Boulevard		Knoxville	TN	37923
Parma Community General Hospital	7007 Powers Boulevard		Parma	OH	44129
Parrish Medical Center	951 N. Washington Avenue		Titusville	FL	32796
Pasco Regional Medical Center	13000 100 Fort King Road		Dade City	FL	33525
PBI Regional Medical Center	350 Boulevard		Passaic	NJ	07055
Peace River Regional Medical	2500 Harbor Boulevard		Port Charlotte	FL	33952
Peninsula Regional Medical Center	100 East Carroll Street		Salisbury	MD	21801
Penn Presbyterian Medical Center	39th & Market Streets		Philadelphia	PA	19104
Penn State Hershey Medical Center	PO Box 850 MC H047		Hershey	PA	17033-0850
Pennsylvania Hospital	800 Spruce Street		Philadelphia	PA	19107-6192
Penrose – St. Francis Health Services	2222 North Nevada, #3000		Colorado Springs	CO	80907
Phelps County Regional Medical Center	1000 W. 10th Street		Rolla	MO	65401

Facility Name	Address 1	Address 2	City	State	Zip Code
Phoebe Putney Memorial Hospital	417 Third Avenue		Albany	GA	31701
Phoenix Baptist Hospital	2000 W. Bethany Home Road		Phoenix	AZ	85015
Phoenixville Hospital	140 Nutt Road		Phoenixville	PA	19460-3906
Piedmont Hospital	95 Collier Road Suite 2075		Atlanta	GA	30309
Piedmont Medical Center	222 S. Herlong Avenue		Rock Hill	SC	29732
Pikesville Medical Center	911 Bypass Road		Pikesville	KY	41501
Pinnacle Health Invasive Cardiology	111 South Front Street		Harrisburg	PA	17101-2099
Pioneer Valley Hospital	3590 West 9000 South, Suite 315		West Jordan	UT	84088
Pitt County Memorial Hospital	2100 Statonsburg Road	PCMH Heart Center	Greenville	NC	27835
Plantation General Hospital	401 NW 42nd Avenue		Plantation	FL	33317
Pocono Medical Center	206 East Brown Street		East Stroudsburg	PA	18301
Pomona Valley Hospital Med Center	1798 N. Garey Avenue		Pomona	CA	91768

Facility Name	Address 1	Address 2	City	State	Zip Code
Poplar Bluff Regional Medical Center	2620 N. Westwood Boulevard		Poplar Bluff	MO	63901
Port Huron Hospital	1221 Pine Grove Avenue		Port Huron	MI	48060
Porter Adventist Hospital	2525 S. Downing Street		Denver	CO	80210-5817
Porter Valparaiso Hospital Campus	814 Laporte Avenue		Valparaiso	IN	46383
Portneuf Medical Center	651 Memorial Drive		Pocatello	ID	83201
Portsmouth Regional Hospital	333 Borthwick Avenue		Portsmouth	NH	03801
Prairie Lakes Healthcare	401 9th Avenue		Watertown	SD	57201
Presbyterian Healthcare Services	PO Box 26666		Albuquerque	NM	87125
Presbyterian Hospital	200 Hawthorne Lane		Charlotte	NC	28233
Presbyterian Hospital – Denton	3000 I-35 N		Denton	TX	76201
Presbyterian Hospital of Dallas	Presbyterian Hospital	8200 Walnut Hill Lane	Dallas	TX	75231
Presbyterian Intercommunity Hospital	12401 Washington Boulevard		Whittier	CA	90602
Presbyterian/ St.Luke's Medical Center	1719 E. 19th Avenue		Denver	CO	80218-1235

Facility Name	Address 1	Address 2	City	State	Zip Code
Prince George's Hospital Center	3001 Hospital Drive		Cheverly	MD	20785
Princeton Baptist Medical Center	701 Princeton Avenue, SW		Birmingham	AL	35211-1399
Proctor Hospital	5409 N. Knoxville Avenue		Peoria	IL	61614
Promise Regional Medical Center – Hutchinson	1701 E. 23rd Avenue		Hutchinson	KS	67502
Protestant Memorial Medical Center	4500 Memorial Drive		Belleville	IL	62226
Provena Covenant Medical Center	1400 West Park Street		Urbana	IL	61801-9901
Provena Mercy Medical Center	1325 North Highland Avenue		Aurora	IL	60506
Provena Saint Joseph Medical Center	333 North Madison Street		Joliet	IL	60435-6595
Provena Saint Marys Hospital	500 West Court Street		Kankakee	IL	60901
Provena St. Joseph Hospital	77 N. Airlite Street		Elgin	IL	60123
Provena United Samaritans Medical Center	812 North Logan Avenue		Danville	IL	61832
Providence Alaska Medical Center	3200 Providence Drive		Anchorage	AK	99508-4662
Providence Health Center	6901 Medical Parkway		Waco	TX	76712

Facility Name	Address 1	Address 2	City	State	Zip Code
Providence Holy Cross Medical Center	501 South Buena Vista Street		Burbank	CA	91505
Providence Hospital	6801 Airport Boulevard		Mobile	AL	36608
Providence Hospital	2435 Forest Drive		Columbia	SC	29204
Providence Medford Medical Center	1111 Crater Lake Avenue		Medford	OR	97527
Providence Medical Center	8929 Parallel Parkway		Kansas City	KS	66112-1689
Providence Memorial Hospital	2001 North Oregon Street		El Paso	TX	79902
Providence Park Hosptial	16001 W. Nine Mile Road		Novi	MI	48374
Providence Portland Medical Center	9205 SW Barnes Road	9205 South West. Barnes Road	Portland	OR	97225
Providence Regional Medical Center Everett	1321 Coby Avenue		Everett	WA	98206-1147
Providence Saint Joseph Medical Center	501 South Buena Vista Street		Burbank	CA	91505
Providence Saint Vincent Medical Center	Regional Heart Data Services	9205 South West Barnes Road #33	Portland	OR	97225
Providence St. Peter Hospital	413 N. Lilly Road		Olympia	WA	98506
Providence Tarzana Medical Center	18321 Clark Street		Tarzana	CA	91356-3501

Facility Name	Address 1	Address 2	City	State	Zip Code
Queen of the Valley Medical Center	1000 Trancas Street		Napa	CA	94558
Queens Medical Center	1301 Punchbowl Street		Honolulu	HI	96813
Rankin Medical Center	350 Crossgates Boulevard		Brandon	MS	39042
Rapid City Regional Hospital	353 Fairmont Boulevard		Rapid City	SD	57702
Rapides Regional Medical Center	211 4th Street Box 30101		Alexandria	LA	71301
Raulerson Hospital (HCA)	1796 Highway 441 North		Okeechobee	LA	34972
Redmond Regional Medical Center	501 Redmond Road		Rome	GA	30165
Reedsburg Area Medical Center	2000 N. Dewey Avenue		Reedsburg	WI	53959
Regents of the University of Michigan	2101 Commonwealth Boulevard		Ann Arbor	MI	48105
Regional Hospital of Jackson	367 Hospital Boulevard		Jackson	TN	38305
Regional Medical Center	225 N. Jackson Avenue		San Jose	CA	95116
Regional Medical Center	3000 St. Matthews Road		Orangeburg	SC	29118
Regional Medical Center	900 Hospital Drive		Madisonville	KY	42431-1644

Facility Name	Address 1	Address 2	City	State	Zip Code
Regional Medical Center Bayonet Point	14000 Fivay Road		Hudson	FL	34667
Regional Medical Center Of Acadiana	2810 Ambassador Caffrey Pkwy.		Lafayette	LA	70506
Regions Hospital	640 Jackson Street	Mail Stop 11102-M	St. Paul	MN	55101
Reid Hospital & Healthcare Services	1401 Chester Boulevard		Richmond	IN	47374
Renown Regional Medical Center	1155 Mill Street	R 11	Reno	NV	89502
Research Medical Center	2316 East Meyer Boulevard	Cardiology Services	Kansas City	MO	64132
Reston Hospital Center	1850 Town Center Parkway		Reston	VA	20190
Resurrection Medical Center	7435 W. Talcott Avenue		Chicago	IL	60631
Rex Hospital	4420 Lake Boone Trail		Raleigh	NC	27607
Rhode Island Hospital	593 Eddy Street		Providence	RI	02903
Richardson Regional Medical Center	401 W. Campbell Road		Richardson	TX	75080
Richmond University Medical Center	355 Bard Avenue		Staten Island	NY	10310
Riddle Memorial Hospital	1068 W. Baltimore Pike		Media	PA	19063-5177
Rideout Memorial Hospital	726 Fourth Street		Marysville	CA	95901
Ridgecrest Regional Hospital	1081 N. China Lake Boulevard		Ridgecrest	CA	93555

Facility Name	Address 1	Address 2	City	State	Zip Code
Rio Grande Regional Hospital	101 E. Ridge Road		McAllen	TX	78503
River Oaks Hospital	1030 River Oaks Drive		Flowood	MS	39232
River Park Hospital	1559 Spata Road		McMinnville	TN	37110
River Region Medical Center	2100 Highway 61 North		Vicksburg	MS	39183
Riverside Community Hospital	4445 Magnolia Avenue		Riverside	CA	92501
Riverside Medical Center	350 N. Wall Street		Kankakee	IL	60901
Riverside Methodist Hospital	3535 Olentangy River Road		Columbus	OH	43214
Riverside Regional Medical Center	500 J Clyde Morris Boulevard		Newport News	VA	23601
Riverview Hospital	395 Westfield Road		Noblesville	IN	46060
Riverview Regional Medical Center	600 South Third Street	PO Box 268	Gadsden	AL	35901
Robert Packer Hospital	1 Guthrie Square		Gadsden	AL	18840
Robert Wood Johnson University Hospital	1 Robert Wood Johnson Place		New Brunswick	NJ	08901
Robinson Memorial Hospital	6847 N. Chestnut Street		Ravenna	OH	44266

Facility Name	Address 1	Address 2	City	State	Zip Code
Rochester General Hospital	1425 Portland Avenue		Rochester	NY	14621
Rockford Memorial Hospital	2400 North Rockton Avenue		Rockford	IL	61103
Rogue Valley Medical Cent	2825 E. Barnett Road	Performance Improvement Dept.	Medford	OR	97504
Rome Memorial Hospital	1500 North James Street		Rome	NY	13440
Roper Hospital	316 Calhoun Street		Charleston	SC	29401
Rose Medical Center	4567 E. 9th Avenue		Denver	CO	80220-3941
Roswell Regional Hospital	117 East 19th Street		Roswell	NM	88201
Round Rock Medical Center	2400 Round Rock Medical Center		Round Rock	TX	78681
Rowan Regional Medical Center	612 Mocksville Ave.		Salisbury	NC	28144
Rush Hospital	1314 19th Avenue		Meridian	MS	39301
Rush University Medical Center	1653 West Congress Parkway		Chicago	IL	60612
Rush-Copley Medical Center	2000 Ogden Avenue		Aurora	IL	60504
Russell Medical Center	3316 Highway 280 PO Box 939		Alexander City	AL	35011
Russellville Hospital	15155 Highway 43		Russellville	AL	35653

Facility Name	Address 1	Address 2	City	State	Zip Code
Rutland Regional Medical Center	160 Allen Street		Rutland	VT	05701
Sacred Heart Hospital of Pensacola	5151 North 9th Avenue		Pensacola	FL	32504-8721
Sacred Heart Hospital Attn: A/P	900 W. Clairemont Avenue		Eau Claire	WI	54701
Sacred Heart Medical Center	770 E. 11th Avenue		Eugene	OR	97401
Sacred Heart Medical Center	101 W. Eighth Avenue		Spokane	WA	99204
Saddleback Memorial Medical Center	24451 Health Center Drive		Laguna Hills	CA	92653
Saint Agnes Medical Center	1303 E. Herndon Avenue		Fresno	CA	93720
Saint Anthony Medical Center	1201 S. Main Street		Crown Point	IN	46307
Saint Bernadine Medical Center	2101 N. Waterman Avenue		San Bernadino	CA	92404-4836
Saint Clare's Hospital	611 St. Joseph's Avenue		Marshfield	WI	54449
Saint Elizabeth Health Center	1044 Belmont Avenue		Youngstown	OH	44511
Saint Elizabeth Hospital	2700 W. 9th Avenue Suite 107		Oshkosh	WI	54904
Saint Elizabeth Healthcare-Edgewood	1 Medical Village Drive		Edgewood	KY	41017-3403

Facility Name	Address 1	Address 2	City	State	Zip Code
Saint Elizabeth Regional Medical Center	555 S. 70th Street		Lincoln	NE	68510-2462
Saint Elizabeth's Hospital	211 South 3rd Street		Belleville	IL	62220-1915
Saint Francis Hospital	2122 Manchester Expressway		Columbus	GA	31904
Saint Francis Hospital	5959 Park Avenue		Memphis	TN	38119
Saint Francis Hospital	6161 S. Yale Avenue		Tulsa	OK	74136
Saint Francis Hospital & Health Center	8111 S. Emerson Avenue		Indianapolis	IN	46237
Saint Francis Hospital & Medical Center	114 Woodland Street		Hartford	CT	06105
Saint Francis Hospital of Evanston	355 Ridge Avenue		Evanston	IL	60202
Saint John Hospital & Medical Center	22151 Moross Road	Professional Bldg #1, #126	Detroit	MI	48236-2148
Saint John Macomb-Oakland Hospital	11800 E. 12 Mile Road	Room # 2510	Warren	MI	48093
Saint Johns Health Center	1328 Twenty-Second Street		Santa Monica	CA	90404
Saint Johns Mercy Medical Center	615 S. New Ballas Road		St. Louis	MO	63141
Saint Joseph – London	310 East 9th Street		London	KY	40741
Saint Joseph Hospital	1100 W. Steward Drive		Orange	CA	92868

Facility Name	Address 1	Address 2	City	State	Zip Code
Saint Joseph Hospital	3001 W. Martin Luther King Boulevard		Tampa	FL	33607
Saint Joseph Hospital	2900 N. Lake Shore Drive		Chicago	IL	60657
Saint Joseph Regional Health Center	2801 Franciscan Street		Bryan	TX	77802-2544
Saint Joseph's Hospital	1824 Murdoch Avenue		Parkersburg	WV	26102-0327
Saint Joseph's Hospital and Medical Center	350 West Thomas Road		Phoenix	AZ	85013
Saint Josephs Hospital / Marshfield Clinic	611 St. Joseph Avenue		Marshfield	WI	54449-1832
Saint Joseph's Hospital of Atlanta	5665 Peachtree Dunwoody Road		Atlanta	GA	30342
Saint Josephs Regional Medical Center – SB	801 East LaSalle Avenue		South Bend	IN	46617
Saint Louis University Hospital	3635 Vista at Grand		Saint Louis	MO	63110
Saint Luke's East – Lee's Summit	100 NE Saint Luke's Boulevard		Lee's Summit	MO	64086
Saint Luke's Hospital	1026 A Avenue, NE		Cedar Rapids	IA	52406-3026
Saint Luke's Hospital	4401 Wornall Road (MAHI 5th Floor)		Kansas City	MO	64111
Saint Luke's Northland Hospital	Saint Luke's Hospital	4401 Wornall Road	Kansas City	MO	64111

Facility Name	Address 1	Address 2	City	State	Zip Code
Saint Luke's Hospital	232 S. Woods Mill Road		Chesterfield	MO	63017-3417
Saint Luke's Regional Medical Center	190 E. Bannock Street		Boise	ID	83712-6241
Saint Margaret Mercy	5454 Hohman Avenue		Hammond	IN	46320
Saint Mary Corwin Medical Center	1008 Minnequa Avenue		Pueblo	CO	81004-3798
Saint Mary Mercy Hospital	36475 West Five Mile Road		Livonia	MI	48154
Saint Mary's Hospital	56 Franklin Street		Waterbury	CT	06706
Saint Mary's Hospital and Regional Medical Center	2635 N. 7th Street		Grand Junction	CO	81501-8209
Saint Mary's Medical Center	2900 First Avenue		Huntington	WV	25702
Saint Mary's Regional Medical Center	235 W. Sixth Street		Reno	NV	89503
Saint Mary's Medical Center	3700 Washington Avenue		Evansville	IN	47750
Saint Peter's Hospital	315 South Manning Boulevard		Albany	NY	12208
Saint Rita's Medical Center	730 West Market Street		Lima	OH	45801-4602
Saint Rose Dominican – Siena Campus	3001 St. Rose Parkway		Henderson	NV	89052

Facility Name	Address 1	Address 2	City	State	Zip Code
Saint Thomas Health Care Services	4220 Harding Road		Nashville	TN	37236
Saint Vincent Health Center	252 West 25th Street		Erie	PA	16544
Saint Vincent Hospital	123 Summer Street	Suite 270	Worcester	MA	01608
Saint Vincent Medical Center/Health Center	2 St. Vincent Circle		Little Rock	AR	72205
Salem Hospital (Regional Health Services)	665 Winter Street SE		Salem	OR	97301-3919
Salina Regional Health Center	400 S. Santa Fe Avenue		Salina	KS	67401
Salinas Valley Memorial Hospital	450 E. Romie Lane		Salinas	CA	93901-4098
Salt Lake Regional Medical Center	1050 E South Temple		Salt Lake City	UT	84102
San Antonio Community Hospital	999 San Bernardino Road		Upland	CA	91786
San Francisco Heart and Vascular Institute	1900 Sullivan Avenue		Daly City	CA	94015
San Jacinto Methodist Hospital	4401 Garth Road		Baytown	TX	77521
San Joaquin Community Hospital	2615 Eye Street		Bakersfield	CA	93301
San Joaquin General Hospital	500 W. Hospital Road		French Camp	CA	95231

Facility Name	Address 1	Address 2	City	State	Zip Code
San Juan Regional Medical Center	801 W. Maple Street		Farmington	NM	87401
San Ramon Regional Medical Center	6001 Norris Canyon Road		San Ramon	CA	94583
Sanford Health	801 Broadway North		Fargo	ND	58122
Sanford USD Medical Center	900 East 54th Street		Sioux Falls	SD	57104
Santa Barbara Cottage Hospital	PO Box 689		Santa Barbara	CA	93102-0689
Santa Rosa Memorial Hospital	1165 Montgomery Drive		Santa Rosa	CA	95402
Sarasota Memorial Hospital	1700 S. Tamiami Trail		Sarasota	FL	34239
Satilla Heart Center	410 Darling Avenue		Waycross	GA	31501
Savoy Medical Center	801 Poincianna Street		Mamou	LA	70554
Scott and White Hospital	2401 South 31st Street		Temple	TX	76508
Scottsdale Healthcare Osborn	7400 E. Osborn Road		Scottsdale	AZ	85260
Scottsdale Healthcare Shea	9003 E. Shea Boulevard – Administration		Scottsdale	AZ	85260
Scottsdale Healthcare Thompson Peak	7400 E. Osborn Road		Scottsdale	AZ	85251
Scripps Green Hospital – La Jolla	10666 North Torrey Pines Road		La Jolla	CA	92037

Facility Name	Address 1	Address 2	City	State	Zip Code
Scripps Memorial Hospital Encinitas	354 Santa Fe Drive		Encinitas	CA	92024
Scripps Memorial Hospital – La Jolla	9888 Genesee Avenue	Mailstop LJ101	La Jolla	CA	92037
Scripps Mercy Hospital – San Diego	4077 5th Avenue	MER 74	San Diego	CA	92103
Scripps Mercy Hospital – Chula Vista	435 H Street	CV-101	Chula Vista	CA	91910
Sebastian River Medial Center	13695 S. US Highway 1		Sebastian	FL	32958
Self Regional Healthcare	1325 Spring Street		Greenwood	SC	29646
Sentara Careplex Hospital	600 Gresham Drive		Norfolk	VA	23507
Sentara Leigh Hospital	600 Gresham Drive		Norfolk	VA	23507
Sentara Norfolk General Hospital	600 Gresham Drive		Norfolk	VA	23507
Sentara Obici Hospital	2800 Goodwin Boulevard		Suffolk	VA	23434
Sentara Virginia Beach General Hospital	1060 First Colonial Road		Virginia Beach	VA	23454-0685
Sentara Williamsburg Hospital	600 Gresham Drive		Norfolk	VA	23507
Sequoia Hospital	Whipple & Alameda Avenues		Redwood City	CA	94062

Facility Name	Address 1	Address 2	City	State	Zip Code
Seton Medical Center	1201 W. 38th Street		Austin	TX	78705
Seton Medical Center Williamson	201 Seton Parkway		Round Rock	TX	78665
Shady Grove Adventist Hospital	9901 Medical Center Drive		Rockville	MD	20850
Shands Jacksonville Medical Center	655 West 8th Street		Jacksonville	FL	32209
Shannon Medical Center	120 E. Harris Avenue		San Angelo	TX	76903
Sharon Regional Health System	740 E. State Street		Sharon	PA	16146
Sharp Chula Vista Medical Center	8695 Spectrum Center Court		San Diego	CA	92123
Sharp Grossmont	5555 Grossmont Center Drive		La Mesa	CA	91942
Sharp Memorial Hospital	7901 Frost Street		San Diego	CA	92123
Shasta Regional Medical Center	1100 Butte Street		Redding	CA	96001
Shawnee Mission Medical Center	9100 West 74th Street		Shawnee Mission	KS	66204-4004
Shelby Baptist Medical Center	1000 First Street North		Alabaster	AL	35007
Sherman Hospital	1425 N. Randall Road		Elgin	IL	60123

Facility Name	Address 1	Address 2	City	State	Zip Code
Shore Health System of Maryland	219 South Washington Street		Easton	MD	21601
Sierra Medical Center	1625 Medical Center Drive		El Paso	TX	79902
Sierra Providence East Medical Center	1625 Medical Center Drive		El Paso	TX	79902
Sierra Vista Regional Medical Center	1010 S. Murray Avenue		San Luis Obispo	CA	93405
Silver Cross Hospital	1200 Maple Road		Joliet	IL	60432
Simi Valley Hospital & Health Care Services	2975 North Sycamore Drive		Simi Valley	CA	93065
Sinai – Grace Hospital	6071 W. Outer Drive		Detroit	MI	48235
Sinai Hospital of Baltimore	2401 West Belvedere Avenue		Baltimore	MD	21215-5271
Singing River Hospital	2809 Denny Avenue		Pascagoula	MS	39581
Sisters of Charity Hospital	515 Abbott Road		Buffalo	NY	14220
Skaggs Community Health Center	PO Box 650		Branson	MO	65615-0650
Skagit Valley Hospital Cardiac Cath Lab	1415 E. Kincade Street		Mount Vernon	WA	98273
Skokie Hospital	9600 Gross Point Road	Cardiac Cath Lab	Skokie	IL	60076-1214
Sky Ridge Medical Center	10101 Ridgegate Parkway		Lone Tree	CO	80124

Facility Name	Address 1	Address 2	City	State	Zip Code
Skyline Medical Center/ HTI Memorial Hospital Corp.	3441 Dickerson Pike		Nashville	TN	37207
Skyridge Medical Center	2305 Chambliss Avenue		Cleveland	TN	37311
Somerset Hospital	225 South Center Avenue		Somerset	PA	15501-2088
South Baldwin Regional Medical Center	1613 N. McKenzie Street		Foley	AL	36535
South Bay Hospital	4016 Sun City Center Boulevard		Sun City Center	FL	33570
South Central Regional Medical Center	PO Box 607		Laurel	MS	39440
South Crest Hospital	8801 S. 101st Avenue E		Tulsa	OK	74133
South Fulton Medical Center	1170 Cleveland Avenue		East Point	GA	30344
South GA Medical Center	PO Box 1727		Valdosta	GA	31603-1727
South Lake Hospital	1099 Citrus Tower Boulevard		Clermont	FL	34711
South Miami Hospital	6200 SW 73rd Street		Miami	FL	33143
South Nassau Communities Hospital	One Healthy Way		Oceanside	NY	11572
South Shore Hospital	55 Fogg Road`		South Weymouth	MA	02190-2432
Southeast Alabama Medical Center	1108 Ross Clark Circle		Dothan	AL	36301

Facility Name	Address 1	Address 2	City	State	Zip Code
Southeast Baptist Hospital	730 North Main Avenue	Suite 424	San Antonio	TX	78205
Southeast Missouri Hospital	1701 Lacey Street		Cape Girardeau	MO	63701
Southern Hills Hospital	9300 West Sunset Road		Las Vegas	NV	89148
Southern Hills Medical Center	391 Wallace Road		Nashville	TN	37211
Southern New Hampshire Medical Center	8 Prospect Street		Nashua	NH	03060
Southern Ohio Medical Center	1805 27th Street		Portsmouth	OH	45662
Southern Regional Medical Center	11 Upper Riverdale Road SW		Riverdale	GA	30274
Southside Hospital	301 East Main Street		Bayshore	NY	11706
SouthView Hospital	1997 Miamisburg-Centerville Road		Dayton	OH	45459
Southwest General Health Center	18697 Bagley Road		Middleburg Heights	OH	44130-3417
Southwest General Hospital	7400 Barlite Boulevard		San Antonio	TX	78224
Southwest MS Regional Medical Center	303 Marion Avenue		McComb	MS	39648
Southwest Washington Medical Center	600 NE 92nd Avenue		Vancouver	WA	98664

Facility Name	Address 1	Address 2	City	State	Zip Code
Southwestern Medical Center	5602 SW Lee Boulevard		Lawton	OK	73505
Spalding Regional Medical Center	601 South 8th Street		Griffin	GA	30224
Sparks Regional Medical Center	1001 Towson Avenue		Fort Smith	AR	72917-7006
Sparrow Health System	1215 East Michigan Avenue		Lansing	MI	48909-7980
Spartanburg Regional Medical Center	101 East Wood Street	Cardiac Cath Lab / 3rd Floor Heart Center	Spartanburg	SC	29303
Spectrum Health	100 Michigan Street NE	MC 037, Rm 3825A	Grand Rapids	MI	49503-2560
Spotsylvania Regional Medical Health Center	4600 Spotsylvania County Parkway		Fredericksburg	VA	22408
Spring Branch Medical Center	8850 Long Point Road		Houston	TX	77055
Spring Valley Hospital	5400 S. Rainbow Boulevard		Las Vegas	NV	89118
Springhill Memorial Hospital	3719 Dauphin Street		Mobile	AL	36608
Springs Memorial Hospital	800 West Meeting Street		Lancaster	SC	29720
SSM St. Clare Health Center	1015 Corporate Square Drive	Suite 130	St. Louis	MO	63132
SSM St. Joseph Health Center	300 First Capitol Drive		St. Charles	MO	63301
St. Anthony Central Hospital	4231 W. 16th Avenue		Denver	CO	80204-1335

Facility Name	Address 1	Address 2	City	State	Zip Code
St. Anthony North Hospital	4231 W. 16th Avenue		Denver	CO	80204
St. James Hospital and Health Centers	3800 West 203rd Street Suite 207		Olympia Fields	IL	60461
St. Joseph Hospital	700 Broadway		Fort Wayne	IN	46802
St. Joseph Hospital-Oakland	44405 Woodward Avenue		Pontiac	MI	48341-5023
St. Joseph Medical Center	1717 South J Street		Tacoma	WA	98405-4933
St. Josephs Hospital	45 W. 10th street		St Paul	MN	55102
St. Joseph Hospital Health Center	301 Prospect Avenue		Syracuse	NY	13203
St. Luke's Cornwall Hospital	70 DuBois Street		Newburgh	NY	12550
St. Mary's Health Care Systems	1230 Baxter Street		Athens	GA	30606
St. Mary's Hospital	400 North Pleasant		Centralia	IL	62801
St. Mary's Regional Medical Center	305 S. 5th Street		Enid	OK	73701
St. Agnes Hospital	900 S. Caton Avenue		Baltimore	MD	21229
St. Agnes Hospital	430 E. Division Street		Fond du lac	WI	54935
St. Alexius Medical Center	1555 Barrington Road		Hoffman Estates	IL	60194-1018
St. Alphonsus Regional Medical Center	1055 N. Curtis Road		Boise	ID	83706

Facility Name	Address 1	Address 2	City	State	Zip Code
St. Anthony Hospital	1000 N. Lee Avenue		Oklahoma City	OK	73102
St. Anthony Memorial Health Centers	301 W. Homer Street	Cath Lab	Michigan City	IN	46360
St. Anthony's Health Care	1200 7th Avenue North	MS 2019	St. Petersburg	FL	33705
St. Anthony's Health Center	One Saint Anthony Way		Alton	Il	62002
St. Anthony's Medical Center	10010 Kennerly Road		St. Loius	MO	63128-2106
St. Barnabas Medical Center	94 Old Short Hills Road		Livingston	NJ	07039
St. Bernards Medical Center	225 E. Jackson Avenue		Jonesboro	AR	72401
St. Catherine Hospital East Chicago	1500 South Lake Park Avenue		Hobart	IN	46342
St. Catherine of Siena	50 Route 25A		Smithtown	NY	11787
St. Charles Hospital	200 Belle Terre Road		Port Jefferson	NY	11777
St. Charles Medical Center	2500 North East Neff Road		Bend	OR	97701-6015
St. Clair Hospital	St. Clair Hospital	1000 Bower Hill Road	Pittsburgh	PA	15243
St. Cloud Regional Medical Center	2906 17th Street		St. Cloud	FL	34769

Facility Name	Address 1	Address 2	City	State	Zip Code
St. David's Medical Center	919 East 32nd Street		Austin	TX	78765
St. David's South Austin Hospital	901 W. Ben White Boulevard		Austin	TX	78704
St. Dominic-Jackson Memorial Hospital	969 Lakeland Drive		Jackson	MS	39216
St. Edwards Mercy Medical Center	7301 Rogers Avenue		Ft. Smith	AR	72917-7000
St. Elizabeth Boardman	8401 Market Street		Boardman	OH	44512
St. Elizabeth Healthcare Florence	7380 Turfway Road		Florence	KY	41042
St. Elizabeth Medical Center	1701 S. Creasy Lane		Lafayette	IN	47905
St. Elizabeth Medical Center	2209 Genesee Street		Utica	NY	13501
St. Elizabeths Medical Center	736 Cambridge Street		Brighton	MA	02135
St. Francis Health Center	1700 SW 7th Street		Topeka	KS	66605
St. Francis Hospital	7th & Clayton		Wilmington	DE	19805
St. Francis Hospital	One St. Francis Drive		Greenville	SC	29601

Facility Name	Address 1	Address 2	City	State	Zip Code
St. Francis Hospital	333 Laidley Street	PO Box 44 Culloden, WV 25510	Charleston	WV	25322
St. Francis Medical Center	2706 Anita Lane		Monroe	LA	71201
St. Francis Hospital	100 Port Washington Boulevard		Roslyn	NY	11576
St. Francis Medical Center	211 Saint Francis Drive		Cape Girardeau	MO	63703-5049
St. Francis Medical Center	601 Hamilton Avenue		Trenton	NJ	08629
St. Helena Hospital	10 Woodland Road		St. Helena	CA	94574
St. John Medical Center	1923 S. Utica Avenue	Heart Institute Education/ Research	Tulsa	OK	74104
St. John Medical Center	1615 Delaware Street		Longview	WA	98632
St. John Providence Hospital	16001 W. Nine Mile Road		Southfield	MI	48075
St. John West Shore Hospital	29000 Center Ridge Road		Westlake	OH	44145
St. John's Hospital	800 E. Carpenter Street		Springfield	IL	62769
St. John's Hospital	1235 East Cherokee Street		Springfield	MO	65804
St. Johns Regional Medical Center	2727 McClelland Boulevard		Joplin	MO	64804

Facility Name	Address 1	Address 2	City	State	Zip Code
St. Johns Regional Medical Center	1600 N. Rose Avenue		Oxnard	CA	93030-3722
St. Joseph Hospital	2700 Dolbeer Street		Eureka	CA	95501
St. Joseph Hospital	1 Saint Joseph Drive		Lexington	KY	40504
St. Joseph Hospital	172 Kinsley Street		Nashua	NH	03060
St. Jospeh Hospital	2901 Squalicum Parkway		Bellingham	WA	98225
St. Joseph Hospital	360 Broadway		Bangor	ME	04401
St. Joseph Medical Center	2200 E. Washington Street		Bloomington	IL	61701
St. Joseph Medical Center	12th & Walnut Streets		Reading	PA	19603
St. Joseph Medical Center	1401 St. Joseph Parkway		Houston	TX	77002
St. Joseph Medical Center	7601 Olser Drive		Towson	MD	21204
St. Joseph Mercy Hospital	5325 Elliot Drive		Ann Arbor	MI	48106
St. Joseph Regional Medical Center	801 E. Lasalle Avenue		South Bend	IN	46617
St. Joseph Regional Medical Center	703 Main Street		Paterson	NJ	07503
St. Joseph's Hospital	11705 Mercy Boulevard		Savannah	GA	31419

Facility Name	Address 1	Address 2	City	State	Zip Code
St. Joseph's Hospital – North (Baycare Health	4211 Van Dyke Road		Lutz	FL	33558
St. Joseph's Hospital	350 N. Wilmot Road		Tucson	AZ	85711
St. Joseph's Medical Center	127 S. Broadway		Yonkers	NY	10701
St. Josephs Medical Center of Stockton	1800 North California Street		Stockton	CA	95204
St. Josephs Mercy Health Center	300 Werner Drive		Hot Springs	AR	71913
St. Jude Medical Center	101 East Valencia Mesa		Fullerton	CA	92835
St. Luke's Baptist Hospital	730 North Main Avenue	Suite 409	San Antonio	TX	78205
St. Luke's Community Medical Center (The Woodlands)	17200 St. Luke's Way		The Woodlands	TX	77384
St. Luke's Episcopal Hospital	3100 Main Street	MC5-313	Houston	TX	77030
St. Lukes Hospital	363 Highland Avenue		Falls River	MA	02720
St. Lukes Hospital	5901 Monclova Road		Maumee	OH	43537
St. Luke's Hospital	915 E. First Street		Duluth	MN	55805

Facility Name	Address 1	Address 2	City	State	Zip Code
St. Luke's Hospital & Health Network	801 Ostrum Street	St. Luke's Hospital & Health Network	Bethlehem	PA	18015
St. Luke's Hospital and Health Network (Allentown Campus)	801 Ostrum Street	St. Luke's Hospital & Health Network	Bethlehem	PA	18015
St. Luke's Lakeside Hospital	3100 Main Street 647D	MC 5-313	Houston	TX	77002
St. Luke's Medical Center	2900 West Oklahoma Avenue		Milwaukee	WI	53215-4330
St. Luke's Medical Center	1800 E. Van Buren Street		Phoenix	AZ	85006
St. Luke's Regional Medical Center	2720 Stone Park Boulevard		Sioux City	IA	51104
St. Luke's South Hospital	Saint Luke's Hospital	4401 Wornal Road	Kansas City	MO	64111
St. Luke's Sugar Land Hospital	3100 Main Street Suite 647D		Houston	TX	77002
St. Luke's-Roosevelt Hospital Center	1111 Amsterdam Avenue		New York City	NY	10025
St. Mark's Hospital/ Northern Utah Healthcare Corporation	1200 East 3900 South		Salt Lake City	UT	84124
St. Mary Hospital	1201 Langhorne Newton Road		Langhorne	PA	19047

Facility Name	Address 1	Address 2	City	State	Zip Code
St. Mary Medical Center	18300 Highway 18		Apple Valley	CA	92307
St. Mary Medical Center	1050 Linden Avenue		Long Beach	CA	90813-3321
St. Mary Medical Center	1500 South Lake Park Avenue		Hobart	ID	46342
St. Mary of Nazareth Hospital Center	2233 W. Division Street		Chicago	IL	60622
St. Mary's Health Center	6420 Clayton Road		St. Louis	MO	63117
St. Mary's Hospital	1800 East Lake Shore Drive		Decatur	IL	62521
St. Mary's Hospital	1726 Shawano Avenue		Green Bay	WI	54303-3282
St. Mary's Hospital	700 S. Park Street		Madison	WI	53715-1849
St. Mary's Hospital (Passaic)	350 Boulevard		Passaic	NJ	07055
St. Mary's Medical Center	450 Stanyan Street		San Francisco	CA	94117
St. Mary's Medical Center	901 45th Street		West Palm Beach	FL	33407
St. Mary's Medical Center	400 East Third Street		Duluth	MN	55805
St. Mary's of Michigan	800 S. Washington Avenue		Saginaw	MI	48601
St. Mary's Regional Medical Center	PO Box 291 Campus Avenue		Lewiston	ME	04243-0291

Facility Name	Address 1	Address 2	City	State	Zip Code
St. Michael's Medical Center	111 Central Avenue		Newark	NJ	07102
St. Patrick Hospital and Health Sciences Center	500 W. Broadway		Missoula	MT	59802
St. Rose Dominican – De Lima Campus	102 E. Lake Mead Boulevard		Henderson	NV	89015
St. Rose Dominican – San Martin	8280 W. Warm Springs Road		Las Vegas	NV	89113
St. Rose Hospital	27200 Calaroga Avenue		Hayward	CA	94539
St. Tammany Parish Hospital	1202 S. Tyler Street		Covington	LA	70433
St. Vincent Charity Hospital	2351 East 22nd Street		Cleveland	OH	44115
St. Vincent Healthcare	1233 North 30th Street		Billings	MT	59101
St. Vincent Hospital	2660 10th Avenue South #738		Birmingham	AL	35205
St. Vincent Hospital	835 S. Van Buren Street		Green Bay	WI	54301
St. Vincent Medical Center	2131 W. 3rd Street		Los Angeles	CA	90703
St. Vincent's Medical Center	1800 Barrs Street		Jacksonville	FL	32204
St.Vincent's East	50 Medical Park East Drive		Birmingham	AL	35235-3499
Stamford Hospital Health Sciences Library	30 Shelbourne Road PO Box 9317		Stamford	CT	06904-9317
Stanford Hospital and Clinics	Falk Bldg. 2nd flr. 300 Pasteur Dr		Stanford	CA	94305
Staten Island University Hospital	475 Seaview Avenue		Staten Island	NY	10305

Facility Name	Address 1	Address 2	City	State	Zip Code
Stone Crest Medical Center	200 Stonecrest Boulevard		Smyrna	TN	37167
Stony Brook University Medical Center	3 Technology Drive		East Setauket	NY	11733-4073
Stormont-Vail Regional Medical Center	929 SW Mulvane Street		Topeka	KS	66606
Straub Clinic & Hospital: Cath Lab	888 S. King Street		Honolulu	HI	96813
Stringfellow Memorial Hospital	301 East 18th Street		Anniston	AL	36202
Suburban Hospital	8600 Old Georgetown Road		Bethesda	MD	20814
Summerlin Hospital Medical Center	657 Town Center Drive		Las Vegas	NV	89144
Summit Medical Center	5655 Frist Boulevard		Hermitage	TN	37076
Sunrise Hospital and Medical Center	3186 S. Maryland Parkway		Las Vegas	NV	89109
Surgery Center of Temple	1909 SW MK Dodgen Loop		Temple	TX	76502
Sutter Delta Medical Center	3901 Lone Tree Way		Antioch	CA	94509
Sutter Medical Center – Sacramento	3528 Eisenhower Drive		Sacramento	CA	95826
Sutter Medical Center of Santa Rosa	3325 Chanate Road		Santa Rosa	CA	95404
Sutter Roseville Medical Center	One Medical Plaza		Roseville	CA	95661

Facility Name	Address 1	Address 2	City	State	Zip Code
Swedish American Hospital	1401 E. State Street		Rockford	IL	61104
Swedish Covenant Hospital	5145 N. California Avenue		Chicago	IL	60625
Swedish Health Services	500 17th Avenue #A85C		Seattle	WA	98104
Swedish Medical Center	501 East Hampden Avenue		Englewood	CO	80113
T. J. Samson Community Hospital	1301 North Race Street		Glasgow	KY	42141
Tacoma General Hospital	315 Martin Luther King, Jr. Way		Tacoma	WA	98415
Tahlequah City Hospital	1400 East Downing Street		Tahlequah	OK	74465-1008
Tallahassee Memorial Hospital	1300 Miccosukee Road	Attn: Performance Improvement	Tallahassee	FL	32308
Tampa General Hospital	1 Tampa General Circle		Tampa	FL	33601-1289
Temple University Hospital	3401 North Broad Street	1 PP Cardiology	Philadelphia	PA	19140
Terre Haute Regional Hospital	3901 South 7th Street		Terre Haute	IN	47802
Terrebonne General Medical Center	8166 Main Street		Houma	LA	70360
Texas Health Presbyterian Hospital Plano	6200 West Parker Road		Plano	TX	75093-7914

Facility Name	Address 1	Address 2	City	State	Zip Code
Texoma Medical Center	8701 Broadway		Merrillville	IN	46410
TexSAn Heart Hospital	6700 IH-10 West		San Antonio	TX	78201-2009
The Christ Hospital	2139 Auburn Avenue		Cincinnati	OH	45219
The George Washington University Hospital	900 23rd Street, NW		Washington	DC	20037
The Good Samaritan Hospital	PO Box 1281	4th and Walnut Streets	Lebanon	PA	17042
The Heart Hospital at Deaconess Gateway, LLC	600 Mary Street		Evansville	IN	47747
The Heart Hospital Baylor Plano	1100 Allied Drive		Plano	TX	75093
The Heart Hospital of Northwest Texas	1501 S. Coulter Street	PO Box 1110	Amarillo	TX	79175
The Hospital at Westlake Medical Center	5656 Bee Caves Road M-302		Austin	TX	78746
The Hospital of West Central Connecticut	100 Grand Street PO Box 100		New Britain	CT	06050
The Indiana Heart Hospital	8075 North Shadeland Avenue		Indianapolis	IN	46250

Facility Name	Address 1	Address 2	City	State	Zip Code
The Medical Center (TMC)	1000 Dutch Ridge Road		Beaver	PA	15009
The Medical Center of Southeast Texas	2555 Jimmy Johnson Boulevard		Port Arthur	TX	77640
The Methodist DeBakey Heart Center	6565 Fannin Street		Houston	TX	77030
The Monroe Clinic	515 22nd Avenue		Monroe	WI	53566
The Mount Sinai Medical Center	1 Gustave L Levy Place		New York	NY	10029
The Nebraska Medical Center	987551 Nebraska Medical Center		Omaha	NE	68198-7551
The Ohio State University Medical Center	410 W. 10th Avenue	142 Doan Hall	Columbus	OH	43210
The Reading Hospital and Medical Center	6th Avenue and Spruce Street		West Reading	PA	19611
The Surgery Center on Soncy	3501 Soncy Road Suite 118		Amarillo	TX	79119
The Toledo Hospital	2142 North Cove Boulevard	Jobst Tower Suite 200	Toledo	OH	43606
The Uniontown Hospital	500 West Berkeley Street		Uniontown	PA	15401
The Valley Hospital	223 North Van Dien Avenue		Ridgewood	NJ	07450
The Village Regional Hospital	600 East Dixie Avenue		Leesburg	FL	34748

Facility Name	Address 1	Address 2	City	State	Zip Code
The Washington Hospital	155 Wilson Avenue		Washington	PA	15301-3398
The Western Pennsylvania Hospital	4800 Friendship Avenue	CVI	Pittsburgh	PA	15224
Thomas Hospital	750 Morphy Avenue		Fairhope	AL	36532
Thomas Jefferson University Hospital	TJUH	111 S. 11th Street Gibbon Building	Philadelphia	PA	19107
Thomas Memorialo Hospital	4605 MacCorkle Avenue SW		South Charleston	WV	25309
Tift Regional Medical Center	PO Box 747	901 E. 18th Street	Tifton	GA	31794
Timpanogos Regional Hospital	750 W. 800 S.		Orem	UT	84057
Tobey Hospital	363 Highland Avenue		Fall River	MA	
Tomball Regional Hospital	605 Holderrieth Boulevard		Tomball	TX	77375
Torrance Memorial Medical Center	3330 Lomita Boulevard		Torrance	CA	90505
Tri-City Medical Center	3909 Waring Road		Oceanside	CA	92056
Trident Regional Medical Center	9330 Medical Plaza Drive		Charleston	SC	29406
Trinity Hospitals	PO Box 5020		Minot	ND	58702

Facility Name	Address 1	Address 2	City	State	Zip Code
Trinity Medical Center	Attn: Cardiovascular Services	800 Montclair Road	Birmingham	AL	35213
Trinity Medical Center West	4000 Johnson Road		Steubenville	OH	43952
Trinity Regional Medical Center	802 Kenyon Road		Ft. Dodge	IA	50501
Trinity Regional Medical Center	2701 17th Street		Rock Island	IL	61201
Truman Medical Centers	2301 Holmes Street		Kansas City	MO	64108
Tucson Heart Hospital	4888 North Stone Avenue		Tucson	AZ	85704
Tucson Medical Center	5301 E. Grant Road		Tucson	AZ	85712
Tufts Medical Center	750 Washington Street		Boston	MA	02111
Tulane Medical Center	1415 Tulane Avenue		New Orleans	LA	70112
Tuomey Healthcare System Tuomey Regional Medical Center	129 N. Washington Street		Sumter	SC	29150
UC San Diego Medical Center	200 W. Arbor Drive		San Diego	CA	92103
UMASS Memorial Medical Center	55 Lake Ave North		Worcester	MA	01655-0002
Union Hospital	1606 N. 7th Street		Terre Haute	IN	47804
Union Hospital	106 Bow Street		Elkton	MD	21921
Union Memorial Hospital	201 E. University Parkway		Baltimore	MD	21218-2891

Facility Name	Address 1	Address 2	City	State	Zip Code
United Health Services Hospitals/Wilson Regional Medical Center	33 – 57 Harrison Street	Decker 4 Lobby	Johnson City	NY	13790
United Hospital	333 N. Smith Avenue		St. Paul	MN	55102
United Hospital Center, Inc.	PO Box 1680		Clarksburg	WV	53143
United Hospital System	6308 8th Avenue		Kenosha	WI	53143
United Regional Healthcare System	1600 11th Street		Wichita Falls	TX	76301
Unity Health Center	1102 West MacArthur		Shawnee	OK	74804
Unity Hospital	550 Osbourne Road NE		Minneapolis	MN	55432
Unity Hospital	1555 Long Pond Road		Rochester	NY	14626
University Community Hospital	3100 East Fletcher Avenue		Tampa	FL	33613
University Community Hospital Carrollwood Campus	3100 East Fletcher Avenue		Tampa	FL	33613
University of Alabama Hospital	620 19th Street South		Birmingham	AL	35249
University Hospital	234 Goodman Street		Cincinnati	OH	45219
University Hospitals Bedford Medical Center	44 Blaine Avenue		Bedford	OH	44146
University Hospital	1350 Walton Way		Augusta	GA	30901

Facility Name	Address 1	Address 2	City	State	Zip Code
University Hospitals Case Medical Center	11100 Euclid Avenue		Cleveland	OH	44106
University Hospitals Geauga Medical Center	13207 Ravenna Road		Chardon	OH	44024
University Hospitals Richmond Medical Center	27100 Chardon Road		Richmond Heights	OH	44143
University Hospital UMDNJ	150 Bergen Street		Newark	NJ	07101
University Medical Center	1501 N. Campbell Avenue		Tucson	AZ	85724
University Medical Center	1411 Baddour Parkway		Lebanon	TN	37087
University Medical Center	602 Indiana Avenue		Lubbock	TX	79410
University Medical Center LSU	2390 W. Congress Street		Lafayette	IA	70506
University Medical Center Southern Nevada	1800 W. Charleston Boulevard		Las Vegas	NV	89102
University Medical Center of El Paso	4815 Alameda Avenue		El Paso	TX	79905
University of Arkansas Medical Sciences	4301 West Markham Street Suite 532		Little Rock	AR	72205
University of California, Irvine	101 The City Drive		Orange	CA	92868

Facility Name	Address 1	Address 2	City	State	Zip Code
University of California (Santa Monica)	1250 16th Street		Santa Monica	CA	90404
University of California (UCLA)	757 Westwood Boulevard	Room 2412	Los Angeles	CA	90095
University Of California Davis Medical Center	2315 Stockton Boulevard Main Hospital, Rm 6312		Sacramento	CA	95817
University of California San Francisco Medical Center	350 Parnassus Avenue Suite 404 Box 0447		San Franciso	CA	94143-0447
University of Chicago Hospitals	5841 S. Maryland Avenue	University of Chicago Medical Center	Chicago	IL	60637
University of Colorado Hospital Authority	12401 E. 17th Avenue	Mailstop B-132	Aurora	CO	80045
University of CT Health Center/John Dempsey Hospital	263 Farmington Avenue		Farmington	CT	06030
University of Florida (Shands)College of Medicine	1600 SW Archer Road		Gainesville	FL	32610
University of Illinois Medical Center at Chicago	1740 W. Taylor Street	Building 949 Room 2181	Chicago	IL	60610
University of Iowa Hospitals and Clinics	200 Hawkins Drive	UIHC UI Heart	Iowa City	IA	52242

Facility Name	Address 1	Address 2	City	State	Zip Code
University of Kentucky	800 Rose Street		Lexington	KY	40536
University of Louisville Hospital	530 S. Jackson Street		Loiusville	KY	40202
University of Maryland Medical Center Cardiology	22 S. Greene Street		Baltimore	MD	21201-1544
University of Miami	1400 NW 12th Street		Miami	FL	33136
University of Minnesota Medical Center Fairview	420 Delaware Street SE MMC 815		Minneapolis	MN	55455
University of Mississippi Medical Center	2500 N. State Street		Jackson	MS	39216
University of Missouri Hospital and Clinics	1 Hospital Drive C4003		Columbia	MO	65212
University of New Mexico Hospital	2211 Lomas Boulevard		Albuquerque	NM	87106
University of North Carolina Hospitals	UNC Hospitals	101 Manning Drive CB#7075	Chapel Hill	NC	27514
University of Rochester Medical Center	601 Elmwood Avenue		Rochester	NY	14642
University of South Alabama Cardiology Dept.	2451 Fillingim Street		Mobile	AL	36617
University of Tennessee Medical Center	1924 Alcoa Highway	Box 95	Knoxville	TN	37920-6999

Facility Name	Address 1	Address 2	City	State	Zip Code
University of Texas Medical Branch at Galveston	301 University Boulevard		Galveston	TX	77555-0294
University of Texas Southwestern-University Hospital	5323 Harry Hines Boulevard		Dallas	TX	75390-9013
University of Toledo Medical Center	3065 Arlington Avenue	DH2261	Toledo	OH	43614
University of Utah Hospitals and Clinics	50 North Medical Drive	4040b	Salt Lake City	UT	84132
University of Virginia Medical Center	2441 Barringer West Complex	PO Box 800134	Charlottesville	VA	22908-0679
University of Washington Medical Center	1959 NE Pacific Street		Seattle	WA	98195-6422
University of Wisconsin Hospital & Clinics	600 Highland Avenue MC 3204		Madison	WI	53792
University Physicians HealthCare	2800 E. Ajo Way		Tucson	AZ	85713
UPMC Mercy	1400 Locust Street		Pittsburgh	PA	15219
UPMC Passavant Hospital	9100 Babcock Boulevard		Pittsburgh	PA	15237
UPMC Presbyterian Hospital	4601 Baum Road	2nd Floor	Pittsburgh	PA	15213
UPMC Shadyside Hospital	4601 Baum Road	2nd Floor	Pittsburgh	PA	15213

Facility Name	Address 1	Address 2	City	State	Zip Code
Upper Chesapeake Medical Center, Inc.	500 Upper Chesapeake Drive		Bel Air	MD	21014
Upstate Medical University (SUNY)	750 East Adams Street		Syracuse	NY	13120
USC University Hospital	1500 San Pablo Street		Los Angeles	CA	90033
Utah Valley Regional Medical Center	1034 S. 500 W		Provo	UT	84605
Val Verde Regional Medical Center	801 Bedell Avenue		Del Rio	TX	78840
Valley Baptist Medical Center	2101 Pease Street		Harlingen	TX	78550
Valley Care Medical Center	1111 East Stanley Boulevard		Livermore	CA	94550
Valley Hospital Medical Center	620 Shadow Lane		Las Vegas	NV	89106
Valley Medical Center	400 South 43rd Street		Renton	WA	98058
Valley Presbyterian Hospital	15107 Vanowen Street		Van Nuys	CA	91405
Valley Regional Medical Center	Valley Regional Medical Center	100A East Alton Gloor Boulevard	Brownsville	TX	78526
Valley ViewMedical Center	5330 S Highway 95		Fort Mohave	AZ	86426
Valley View Regional Hospital	430 N. Monte Vista		Ada	OK	74820

Facility Name	Address 1	Address 2	City	State	Zip Code
Vanderbilt Heart Institute	1215 21st Avenue	MCE 5th floor	Nashville	TN	37232
Vassar Brothers Medical Center	45 Reade Place		Poughkeepsie	NY	12601
Vaughan Regional Medical Center	1015 Medical Center Parkway		Selma	AL	36701
VCU-Medical College of Virginia	PO Box 980036		Richmond	VA	23298
Venice Regional Medical Center	540 The Rialto		Venice	FL	34285
Verde Valley Medical Center	269 South Candy Lane		Cotttonwood	AZ	86326
Verdugo Hills Hospital	1812 Verdugo Boulevard		Glendale	CA	91208
Via Christi Wichita Health Network	929 N. St. Francis Street		Wichita	KS	67214
Virginia Hospital Center	1701 N. George Mason Drive		Arlington	VA	22205-3698
Virginia Mason Medical Center	1100 Ninth Avenue	X3-CVL	Seattle	WA	98111
WakeMed Cary Hospital	3128 Smoketree Court		Raleigh	NC	27604
WakeMed Raleigh Campus	3128 Smoketree Court		Raleigh	NC	27604
Walker Regional Medical Center	3400 Highway 78 E		Jasper	AL	35501

Facility Name	Address 1	Address 2	City	State	Zip Code
Washington Adventist Hospital	7600 Carroll Avenue		Takoma Park	MD	20912
Washington County Hospital	251 East Antietam Street		Hagerstown	MD	21740
Washington Hospital	2000 Mowry Avenue		Fremont	CA	94538
Washington Regional Medical Center	1125 N College Avenue		Fayetteville	AR	72703-1994
Waterbury Hospital	PO Box 2153		Waterbury	CT	06722-2153
Watsonville Community Hospital	75 Nielson Street		Watsonville	CA	75076
Waukesha Memorial Hospital	N-17 W24100 Riverwood Drive		Waukesha	WI	53188-1187
Wayne Memorial Hospital	PO Box 8001		Goldsboro	NC	27533
Weatherford Regional Medical Center	713 East Anderson Street		Weatherford	TX	76086
Weiss Memorial Hospital	4646 N. Marine Drive		Chicago	IL	60640
Wellmont Holston Valley Medical Center	130 W Ravine Road		Kingsport	TN	37660
Wellstar Cobb Hospital	677 Church Street		Marietta	GA	30066
Wellstar Kennestone Hospital	677 Church Street		Marietta	GA	30066
Wesley Medical Center	550 N. Hillside Street		Wichita	KS	67214
Wesley Medical Center	5001 Hardy Street		Hattiesburg	MS	39402

Facility Name	Address 1	Address 2	City	State	Zip Code
West Anaheim Medical Center	3033 West Orange Avenue		Anaheim	CA	92084
West Chester Medical Center	7700 University Drive		West Chester	OH	45069
West Florida Hospital	8383 North Davis Highway		Pensacola	FL	32514
West Georgia Medical Center	1514 Vernon Road		LaGrange	GA	30240
West Hills Hospital	7300 Medical Center Drive		West Hills	CA	91307
West Houston Medical Center	12141Richmond Avenue		Houston	TX	77082
West Jefferson Medical Center	1101 Medical Center Boulevard		Marrero	LA	70072
West Penn Hospital Forbes Regional Campus	2570 Haymaker Road		Monroeville	PA	15146
West Suburban Medical Center	3 Erie Court		Oak Park	Il	60302
West Valley Hospital	13677 W. McDowell Road		Goodyear	AZ	85338
West Virginia University Hospitals, Inc.	PO Box 8003	Medical Center Drive	Morgantown	WV	26506-8003
Westchester County Medical Center	95 Grasslands Road Suite 114		Valhalla	NY	10595
Western Baptist Hospital	2501 Kentucky Avenue		Paducah	KY	42003
Western Maryland Health System Regional Medical Center	12500 Willowbrook Road	Third Floor Interventional Cardiology	Cumberland	MD	21502-1850
Western Medical Center Santa Ana	1001 North Tustin Avenue		Santa Ana	CA	92705

Facility Name	Address 1	Address 2	City	State	Zip Code
Western Plains Medical Center	3001 Avenue A		Dodge City	KS	67801
Westside Regional Medical Center	8201 West Broward Boulevard		Plantation	FL	33324
Wheaton Franciscan Healthcare-All Saints, Inc.	WFHC Clinical Data Management and Analysis	5000 West Chambers, M229	Milwaukee	WI	53210
Wheaton Franciscan Healthcare-St. Francis, Inc.	WFHC Clinical Data Management and Analysis	5000 West Chambers, M229	Milwaukee	WI	53210
Wheaton Franciscan Healthcare-St. Joseph, Inc.	WFH Clinical Data Management and Analysis	5000 West Chambers, M229	Milwaukee	WI	53210
Wheaton Franciscan - The Wisconsin Heart Hospital Center	WFH Clinical Data Management and Analysis	5000 West Chambers, M229	Milwaukee	WI	53210
Wheeling Hospital	1 Medical Park		Wheeling	WV	26003
White County Medical Center	3214 E. Race Avenue		Searcy	AR	72143
White Memorial Medical Center	1720 Cesar E. Chavez Avenue		Los Angeles	CA	90033
White River Medical Center	1710 Harrison Street		Batesville	AR	72501

Facility Name	Address 1	Address 2	City	State	Zip Code
William Beaumont Hospital	54373 Samara Drive		Macomb	MI	48042-2213
William Beaumont Hospital – Troy	44201 Dequindre Road		Troy	MI	48085
William W. Backus Hospital	326 Washington Street		Norwich	CT	06360
Willis-Knighton Pierremont	2600 Greenwood Road		Shreveport	LA	71103
Willis-Knighton Medical Center	2600 Greenwood Road		Shreveport	LA	71103
Wilson Memorial Hospital	915 West Michigan Street		Sidney	OH	45365
Wilson N. Jones Medical Center	500 N Highland Avenue		Sherman	TX	75092
Winchester Medical Center Inc.	220 Campus Boulevard	Suite 313	Winchester	VA	22601
Winter Haven Hospital	20005 Avenue F Northeast		Winter Haven	FL	33881
Winthrop University Hospital	19600 E. 39th Street		Independence	MO	64057
Wise Regional Health System	609 Medical Center Drive		Decatur	TX	76234
Wishard Hospital Cardiology	1001 W. 10th St.		Indianapolis	IN	46202
Woman's Christian Association Hospital	207 Foote Avenue		Jamestown	NY	14701

Facility Name	Address 1	Address 2	City	State	Zip Code
Woodland Healthcare	1325 Cottonwood Street		Woodland	CA	95695
Woodland Heights Medical Center	505 S. John Redditt Drive		Lufkin	TX	75904
Wooster Community Hospital	1761 Beall Avenue		Wooster	OH	44691
Wuesthoff Health System	110 Longwood Avenue		Rockledge	FL	32956-5002
Wyckoff Heights Medical Center	374 Stockholm Street	Division of Cardiology - 3rd Floor	Brooklyn	NY	11237
Wyoming Medical Center	1233 East 2nd street		Casper	WY	82601-2988
Wyoming Valley Health Care System	575 North River Street		Wilkes-Barre	PA	18764
Yakima Regional Medical Center/Cardiac Center	110 S. 9th Avenue		Yakima	WA	98902
Yakima Valley Memorial Hospital	2811 Tieton Drive		Yakima	WA	98902
Yale New Haven Hospital	20 York Street		New Haven	CT	06510
Yavapai Regional Medical Center	1003 Willow Creek Road		Prescott	AZ	86301
York Hospital	15 Hospital Drive		York	ME	03909
York Hospital	1001 South George Street		York	PA	17405
Yuma Regional Medical Center	2400 S. Avenue A		Yuma	AZ	85364

ADDENDUM X: Active CMS Coverage-Related Guidance Documents April Through June 2010

In the September 24, 2004 **Federal Register** (69 FR 57325), we published a notice in which we explained how we would develop coverage-related guidance documents. These guidance documents are required under section 731 of the MMA. In our notice, we committed to the public that, "At regular intervals, we will update a list of all guidance documents in the **Federal Register**."

Addendum X includes a list of active CMS guidance documents as of the ending date of the period covered by this notice. To obtain full-text copies of these documents, visit the CMS Coverage Web site at http://www.cms.hhs.gov/mcd/index_list.asp?list_type=mcd_1.

Document Name: Factors CMS Considers in Commissioning External Technology Assessments
Date of Issuance: April 11, 2006

Document Name: Factors CMS Considers in Opening a National Coverage Determination
Date of Issuance: April 11, 2006

Document Name: (Draft) Factors CMS Considers in Referring Topics to the Medicare Coverage Advisory Committee
Date of Issuance: March 9, 2005

Document Name: National Coverage Determinations with Data Collection as a Condition of Coverage: Coverage With Evidence Development
Date of Issuance: July 12, 2006

ADDENDUM XI: List of Special One-Time Notices Regarding National Coverage Provisions April Through June 2010

As medical technologies, the contexts under which they are delivered, and the health needs of Medicare beneficiaries grow increasingly complex, our national coverage determination (NCD) process must adapt to accommodate these complexities. As part of this adaptation, our national coverage decisions often include multi-faceted coverage determinations, which may place conditions on the patient populations eligible for coverage of a particular item or service, the providers who deliver a particular service, or the methods in which data are collected to supplement the delivery of the item or service (such as participation in a clinical trial).

We outline these conditions as we release new or revised NCDs. However, details surrounding these conditions may need to be shared with the public as "one-time notices" in the **Federal Register**. For example, we may require that a particular medical service may be delivered only in the context of a CMS-recognized clinical research study, which was not named in the NCD itself. We would then use Addendum XI of this notice, along with our coverage Web site at http://www.cms.hhs.gov/coverage, to provide the public with information about the clinical research study that it ultimately recognizes.

Addendum XI includes any additional information we may need to share about the conditions under which an NCD was issued as of the ending date of the period covered by this notice.

There were no Special One-Time Notices Regarding National Coverage Provisions published this quarter.

ADDENDUM XII: National Oncologic PET Registry (NOPR)

In January 2005, we issued our decision memorandum on **positron emission tomography** (PET) scans, which stated that CMS would cover PET scans for particular oncologic indications, as long as they were performed in the context of a clinical study. We have since recognized the National Oncologic PET Registry as one of these clinical studies. Therefore, in order for a beneficiary to receive a Medicare-covered PET scan, the beneficiary must receive the scan in a facility that participates in the Registry. The following facilities have met the CMS's requirements for performing PET scans under National Coverage Determination CAG-00181N.

Facility Name	Provider Number	Date Approved	State	Other Information
Baptist East Hospital 4000 Kresge Way Louisville KY 40207	9372701	01/29/2010	KY	
Alpha Med Physicians Group 6701 159th Street Tinley Park IL 60477	610860	01/29/2010	IL	
Hackensack Medical and Molecular Imaging 155 State Street Hackensack NJ 07601	85238	01/29/2010	NJ	
Alexian Brothers Medical Center 820 Biesterfield Road Elk Grove Village IL 60007	1265577191	01/29/2010	IL	
South Texas Radiology Imaging Center-North East Imaging Center 12602 Toepperwein, ste 101 San Antonio TX 78233	00867N	01/29/2010	TX	
Cancer Care Center 2435 Fire Mesa Street Las Vegas NV 89128	1760435713	02/01/2010	NV	
Diagnostic Imaging Association 400 N Garfield, Suite 110 Midland TX 79701	1255328817	02/01/2010	TX	
Jefferson Imaging Langhorne 825 Town Center Drive Langhorne PA 19047	1841269099	02/01/2010	PA	
Newark Beth Israel Medical Center 156 Lyons Ave Newark NJ 07112	310002	02/01/2010	NJ	

Facility Name	Provider Number	Date Approved	State	Other Information
Advanced Imaging Center 615 Valley View Drive Suite 101 Moline IL 61265	702970	02/01/2010	IL	
Caritas PET Imaging, LLC at Noble Hospital 115 West Silver Street Westfield MA 01085	1285846410	02/01/2010	MA	
Jefferson Regional Medical Center 565 Coal Valley Road Pittsburgh PA 15236	390265	02/01/2010	PA	
Montgomery Hospital 1308 Powell Street Norristown PA 19404	390108	02/01/2010	PA	
Eastern New Mexico Medical Center Imaging Center 405 West Country Club Road Roswell NM 88201	320006	02/01/2010	NM	
Baltimore Imaging Centers North Park Center 4B North Ave, Suite 300 Bel Air MD21014	H476	02/01/2010	MD	
New Jersey Institute of Radiology PC 630 Broad Street Carlstadt NJ 07072	412182809	02/01/2010	NJ	
Jupiter Hematology Oncology Associates 431 University Blvd Jupiter FL 33458	1003854332	02/01/2010	FL	
Casa Grande Regional Medical Center 1800 E. Florence Blvd. Casa Grande AZ 85222	1437107208	02/01/2010	AZ	
Marshfield Clinic Minocqua Center 9601 Townline Road Minocqua WI 54548	1952347981	02/01/2010	WI	
Cancer Care Associates 11100 Hefner Pointe Drive Oklahoma City OK 73120	731469927	02/01/2010	OK	

Facility Name	Provider Number	Date Approved	State	Other Information
Alliance Community Hospital 200 East State Street Alliance OH 44601	360131	02/01/2010	OH	
Hematology & Oncology Specialists, LLC 4200 Houma Boulevard Metairie LA 70006	1190500005	02/01/2010	LA	
Lake Pointe Imaging Center 1005 West Ralph Hall Parkway, #121 Rockwall TX 75032	450742	02/01/2010	TX	
Mountain Medical Physician Specialists 5121 Cottonwood Street Murray UT 84107	1720035520	02/01/2010	UT	
Advanced Breast Care Imaging 250 Cetronia Road, Ste 102 Allentown PA 18104	103579	02/01/2010	PA	
Independent Imaging, LLC 3347 South State Road 7, Suite 100 Wellington FL 33449	45741	02/01/2010	FL	
Ocean Medical Center 425 Jack Martin Blvd Brick NJ 08724	1962409987	02/01/2010	NJ	
Newport Doctors Medical Imaging 401 Old Newport Boulevard, Suite 201 Newport Beach CA 92663-4289	W19467	02/01/2010	CA	
Neil M. Barth, MD Inc 20162 S.W. Birch Street Suite 150 Newport Beach CA 92660	1063551760	02/01/2010	CA	
Florida Cancer Institute - New Hope 4003 Mariner Blvd Spring Hill FL 34609	K4006	02/01/2010	FL	
Gulfcoast Cancer Institute Largo 100 Highland Ave Largo FL 33770	1629215579	02/01/2010	FL	

Facility Name	Provider Number	Date Approved	State	Other Information
Grand View Hospital 905 Lawn Avenue Sellersville PA 18960	390057	02/02/2010	PA	
Citizens Memorial Healthcare 1500 North Oakland Bolivar MO 65613	1003981549	02/02/2010	MO	
Community Cancer Center of Lake City 4520 West US Hwy 90 Lake City FL 32055	K3866	02/02/2010	FL	
Memorial Hermann Sugarland 17510 W. Grand Parkway South, Suite 120 Sugar Land TX 77479	450848	02/02/2010	TX	Medical Plaza 1
Carlisle Regional Medical Center 361 Alexander Spring Road Carlisle PA 17015	390058	02/02/2010	PA	
Fairview Hospital 18200 Lorain Avenue Cleveland OH 44111	360077	02/02/2010	OH	Moll Cancer Pavillion
Community Hospital 2021 N. 12th Street Grand Junction CO 80501	60054	02/02/2010	CO	
Alliance Imaging-West Coast Rad-MV/LN 27882 Forbes Road, Suite 120 Laguna Niguel CA 92677	1093969479	02/02/2010	CA	
Boston Diagnostic 398 E Altamonte Springs Altamonte SpringS FL 32701	1083691463	02/02/2010	FL	
Gerald Champion Regional Medical Center 2669 N. Scenic Dr. Alamogordo NM 88310	320004	02/02/2010	NM	
Metro South Imaging Center 12935 South Gregory Blue Island IL 60406	1700812294	02/02/2010	IL	
Christus St. Elizabeth 2830 Calder Street	450034	02/02/2010	TX	

Facility Name	Provider Number	Date Approved	State	Other Information
Beaumont TX 77702				
Central DuPage Hospital 25 N Winfield Rd Winfield IL 60190	1003864810	02/02/2010	IL	
Gulf Coast MRI & Diagnostic 5233 Fairmont Parkway, Suite A Pasadena TX 77505	1609823822	02/02/2010	TX	
Desert Regional Medical Center, Pet/Ct 1180 N. Indian Canyon Drive #E-155 Palm Springs CA 92262	1104856095	02/02/2010	CA	
Advanced Imaging@Community Medical Center, LLC 2803 South Avenue West Missoula MT 59804	1164437943	02/02/2010	MT	
Menorah Medical Center 5721 West 119th Street Overland Park KS 66209	170182	02/02/2010	KS	Oncology Services
Northwest Imaging Center 4383 Medical Drive, Ste 150 San Antonio TX 78229	00867N	02/02/2010	TX	
Dayton Physicians, LLC. 9000 N. Main st. Dayton OH 45415	1902844947	02/02/2010	OH	
Mercy Medical Center – Dubuque 250 Mercy Drive Dubuque IA 52001	1659348506	02/02/2010	IA	
DORAL Diagnostic Center 8881 NW 18th Terrace Miami FL 33172	K7806	02/02/2010	FL	
Maple Grove Fairview 14500 99th Ave North Maple Grove MN 55369	1841315165	02/02/2010	MN	
NSMS - Ste. Genevieve, MO US Hwy 61 & 32 Ste. Genevieve MO 63670	1295785079	02/02/2010	MO	
Floyd Memorial Hospital and Health Services	1497798847	02/02/2010	IN	

Facility Name	Provider Number	Date Approved	State	Other Information
2210 Green Valley Rd New Albany IN 47150				
NSMS - Lebanon, MO 100 Hospital Drive Lebanon MO 65536	1295785079	02/02/2010	MO	
Inova Alexandria Hospital 4320 Seminary Road Alexandria VA 22304	490040	02/02/2010	VA	Radiology
Medical Doctors Imaging, Inc. 2020 Court Street Redding CA 96001	1235161480	02/02/2010	CA	
Hancock Regional Hospital 801 North State St Greenfield IN 46140	1952559163	02/02/2010	IN	
Calvert Medical Imaging Center (CMIC) 130 Hospital Drive Suite LL 100 Prince Frederick MD 20678	1629235312	02/02/2010	MD	
NSMS - Clay Center, KS 617 Liberty Street Clay Center KS 67432	1295785079	02/02/2010	KS	
Alliance HealthCare Services Inc 1401 West 5th Street Sheridan WY 82801	1134303845	02/02/2010	WY	
NUSCAN 101 Consolidated Medical Plaza Caguas PR 725	1275630527	02/02/2010	PR	201 Ave Gautier Benitez
Delta County Memorial Hospital 1501 East 3rd Street Delta CO 81416	1417935446	02/02/2010	CO	
Bozeman Deaconess Hospital 915 Highland Blvd Bozeman MT 59715	1720079619	02/02/2010	MT	
Bradford Regional Medical Center 116 Interstate Parkway Bradford PA 16701	390118	02/02/2010	PA	
Gwinnett Medical Center 1000 Medical Center Blvd	1952340994	02/02/2010	GA	

Facility Name	**Provider Number**	**Date Approved**	**State**	**Other Information**
Lawrenceville GA 30045				
Mankato Clinic 1421 Premier Drive Mankato MN 56001	1629044029	02/02/2010	MN	
Delray Medical Center 5352 Linton Boulevard Delray Beach FL 33484	100258	02/02/2010	FL	
Buffalo Hospital 303 Catlin Str, Radiology Buffalo MN 55313	240076	02/02/2010	MN	
Evergreen Radia Imaging Center 11521 N.E. 128th Street Suite 200 Kirkland WA 98034	AB39931	02/02/2010	WA	
Alliance Imaging - St. John's Medical Center 625 E Broadway Jackson WY 83001	W22619	02/02/2010	WY	
Clarion Hospital One Hospital Drive Clarion PA 16214	1265422901	02/04/2010	PA	
Exempla St. Joseph's Hospital 1835 Franklin St. Denver CO 80218	1417946021	02/04/2010	CO	
Olean General Hospital 515 Main St Olean NY 14760	1225083074	02/04/2010	NY	
Excel Medical Imaging 5626 Gulf Drive New Port Richey FL 34652	K5327	02/04/2010	FL	
Delnor Hospital (Imaging Dept) 300 Randall Rd Geneva IL 60134	1407859655	02/04/2010	IL	
Cancer Center of Pasco Pinellas 3000 US Hwy 19 Holiday FL 34691	1101019207	02/04/2010	FL	
Citrus Memorial Health Systems 131 S. Citrus Avenue Inverness FL 34452	592890430	02/04/2010	FL	

Facility Name	Provider Number	Date Approved	State	Other Information
Ironwood Cancer & Research Centers 6111 E Arbor Ave Mesa/Chandler AZ 85206	Z70782	02/04/2010	AZ	695 S Dobson Rd
Cape Cod PET/CT Services, LLC 2 Jan Sebastian Drive Sandwich MA 02563	1407180847	02/04/2010	MA	
Mission Hospital 27700 Medical Center Road Mission Viejo CA 92691	1992752315	02/05/2010	CA	
MetroHealth 5900 Byron Center Ave SW Wyoming MI 49519	1619923919	02/05/2010	MI	
Ardmore PET Associates, LLC 908 North Rockford Rd, Ste C Ardmore OK 73401	1447585302	02/05/2010	OK	
Baptist Medical Center PET*CT 800 Prudential drive Jacksonville FL32221	15786220449	02/05/2010	FL	
Johnston Medical Center 509 N. Bright Leaf Blvd. Smithfield NC 27577	1619911104	02/05/2010	NC	
El Camino Hospital 2500 Grant Road Mountain View CA 95040	943167314	02/05/2010	CA	
NSMS - Carthage, MO 3125 Drive Russell Smith Way Carthage MO 64836	1295785079	02/05/2010	MO	
Gulfcoast Cancer Center 100 Highland Ave Ne Largo FL 33770	1225019649	02/05/2010	FL	
Elite Advanced 17260 Bear Valley Rd Victorville CA 92395	ZZZ23616Z	02/05/2010	CA	
Mountainside Hospital 1 Bay Avenue Montclair NJ 07042	310054	02/05/2010	NJ	
Orange Coast Memorial Imaging Center	50678	02/05/2010	CA	

Facility Name	Provider Number	Date Approved	State	Other Information
9920 Talbert Avenue Fountain Valley CA 92708				
NYOH Mobile PET/CT Imaging Saratoga 377 Church St Saratoga Springs NY 12866	1609863448	02/05/2010	NY	
Compassionate Cancer Care Radiation Diagnostic Grp 260 E. Ontario Avenue, Suite #101 Corona CA 92879	1720073935	02/05/2010	CA	
Athens Cancer Center 75 Hospital Dr., Suite 170 Athens OH 45701	203145500	05/02/2010	OH	

ADDENDUM XIII: Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities April Through June 2010

On October 1, 2003, we issued our decision memorandum on ventricular assist devices for the clinical indication of destination therapy. We determined that ventricular assist devices used as destination therapy are reasonable and necessary only if performed in facilities that have been determined to have the experience and infrastructure to ensure optimal patient outcomes. We established facility standards and an application process. All facilities were required to meet our standards in order to receive coverage for ventricular assist devices implanted as destination therapy.

VAD Destination Therapy Facilities

The following facilities have met the CMS facility standards for destination therapy VADs.

Facility	Provider Number	Date Approved	State	Other Information
Carolinas Medical Center 1000 Blythe Boulevard Charlotte, NC	340113	5/12/2010	NC	Joint Commission certified on 5/12/10
Saint Luke's Hospital 4401 Wornall Road Kansas City, MO 64111	260138	6/16/2010	MO	Joint Commission certified on 6/16/10

ADDENDUM XIV: Lung Volume Reduction Surgery (LVRS) April Through June 2010

The following three types of facilities are eligible for reimbursement for Lung Volume Reduction Surgery (LVRS):

- National Emphysema Treatment Trial (NETT) approved (Beginning 05/07/2007, these will no longer automatically qualify and can qualify only with the other programs);
- Credentialed by the Joint Commission (formerly, the Joint Commision on Accreditation of Healthcare Organizations (JCAHO)) under their Disease Specific Certification Program for LVRS; and
- Medicare approved for lung transplants.

Only the first two types are in the list.

Facility name	Date approved	State	Type of Certification
Baylor College of Medicine Houston, Texas	N/A	TEXAS	NETT
Brigham and Women's Hospital Boston, MA	N/A	MASSACHUSETTS	NETT
Cedars-Sinai Medical Center Los Angeles, CA	N/A	CALIFORNIA	NETT
Chapman Medical Center Orange, CA	N/A	CALIFORNIA	NETT
Cleveland Clinic Foundation Cleveland, OH	N/A	OHIO	NETT
Columbia University New York, NY	N/A	NEW YORK	NETT
Duke University Medical Center Durham, NC	N/A	NORTH CAROLINA	NETT
Johns Hopkins Hospital Baltimore, MD	N/A	MARYLAND	NETT
Kaiser Foundation Hospital - Riverside Riverside, CA	11/01/2008	CALIFORNIA	JCAHO
Long Island Jewish Medical Center New Hyde Park, NY	N/A	NEW YORK	NETT
Mayo Clinic Rochester, MN	N/A	MINNESOTA	NETT
Memorial Medical Center	12/13/2006	ILLINOIS	JCAHO

Facility name	Date approved	State	Type of Certification
Springfield, IL			
National Jewish Medical Center Denver, CO	N/A	COLORADO	NETT
The Ohio State University Hospital Columbus, OH	N/A	OHIO	JCAHO
Ohio State University Medical Center Columbus, OH	N/A	OHIO	NETT
Saint Louis University Saint Louis, MO	N/A	MISSOURI	NETT
Temple University Hospital Philadelphia, PA	08/23/2008	PENNSYLVANIA	JCAHO
UCLA Medical Center Los Angeles, CA	N/A	CALIFORNIA	NETT
University of California, San Diego San Diego, CA	N/A	CALIFORNIA	NETT
University of Maryland Medical Center Baltimore, MD	N/A	MARYLAND	NETT
University of Michigan Medical Center Ann Arbor, MI	N/A	MICHIGAN	JCAHO
University of Pennsylvania Philadelphia, PA	N/A	PENNSYLVANIA	NETT
University of Pittsburgh Pittsburgh, PA	N/A	PENNSYLVANIA	NETT
University of Washington Seattle, WA	N/A	WASHINGTON	NETT
Washington University/Barnes Hospital Saint Louis, MO	N/A	MISSOURI	JCAHO
Allegheny General Hospital Pittsburgh, PA	04/23/2008	PENNSYLVANIA	JCAHO

ADDENDUM XV: Medicare-Approved Bariatric Surgery Facilities

On February 21, 2006, we issued our decision memorandum on bariatric surgery procedures. We determined that bariatric surgical procedures are reasonable and necessary for Medicare beneficiaries who have a body-mass index (BMI) greater than or equal to 35, have at least one co-morbidity related to obesity, and have been previously unsuccessful with medical treatment for obesity.

This decision also stipulated that covered bariatric surgery procedures are reasonable and necessary only when performed at facilities that are:

(1) certified by the American College of Surgeons (ACS) as a Level 1 Bariatric Surgery Center (program standards and requirements in effect on February 15, 2006); or

(2) certified by the American Society for Bariatric Surgery (ASBS) as a Bariatric Surgery Center of Excellence (BSCOE) (program standards and requirements in effect on February 15, 2006).

The following facilities have met our minimum facility standards for bariatric surgery and have been certified by American College of Surgeons (ACS) or American Society for Metabolic and Bariatric Surgery (ASMBS).

Facility Name	Provider Number	Date Approved	State	Other Information
P & S Surgical Hospital / St. Frances 312 Grammont Street Monroe, LA 71201	190246 /190125	04/26/2010	LA	ASMBS
Marshall Medical Center North 11491 US Hwy 431 Albertville, AL 35950	01-0010	04/19/2010	AL	ASMBS
Memorial Medical Center 701 North First Street Springfield, IL 62794	14-0148	04/30/2010	IL	ASMBS
Community Hospital North 7250 Clearvista Drive Indianapolis, IN 46256	150169	04/26/2010	IN	ASMBS
Bayshore Medical Center 4000 Spencer Highway Pasadena, TX 77504	450097	04/09/2010	TX	ASMBS
Columbus Regional Hospital 2325 18th Street Columbus, IN 47201	150112	05/10/2010	IN	ASMBS
Nash Health Care 2460 Curtis Ellis Drive Rocky Mount, NC 27804	34-0147	05/24/2010	NC	ASMBS
Mercy Health Partners-	360056	05/24/2010	OH	ASMBS

Facility Name	Provider Number	Date Approved	State	Other Information
Fairfield 3050 Mack Road Fairfield, OH 45014				
Rex Healthcare 4420 Lake Boone Trail Raleigh, NC 27607	340114	05/17/2010	NC	ASMBS
Our Lady of Lourdes Regional Medical Center 611 St. Landry Street Lafayette, LA 70506	190102	05/24/2010	LA	ASMBS
Carolinas Medical Center Mercy 2608 E 7th Street Charlotte, NC 28204	NPI #1497792550	04/01/2010	NC	Constance Simms - (704) 446-4075
Halifax Health Medical Center 303 N Clyde Morris Blvd Daytona Beach, FL 32114	100017	05/24/2010	FL	ASMBS
Mercy Medical Center North Iowa 1000 4th Street SW Mason City, IA 50401	160064	06/07/10	IA	ASMBS
St. Elizabeth Weight Management Center 4900 Houston Road Florence, KY 41042	195001	10/11/2006 – listing effective as of 06/18/2010	KY	ASMBS
Salem Hospital 875 Oak St SE Salem, OR 97309	380051	6/28/2010	OR	ASMBS
Banner Gateway Medical Center 2940 E. Banner Gateway Drive Gilbert, AZ 85234	03-0122	05/17/2010	AZ	ASMBS
North Cypress Medical Center 21214 Northwest Freeway Houston, TX 77429	670024	6/28/2010	TX	ASMBS
Baptist Hospital East 3900 Kresge Way Louisville, KY 40207	18-0130	06/28/2010	KY	ASMBS
Saint Mary's Health Care 200 Jefferson Avenue SE Grand Rapids, MI 49503-4502	23-0059	06/28/2010	MI	ASMBS

Facility Name	Provider Number	Date Approved	State	Other Information
MetroWest Medical Center, Leonard Morse Hospital 67 Union Street, Fair 4 Natick, Massachusetts 01760	5585	07/14/2010	MA	ASMBS

ADDENDUM XVI: FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials

In a National Coverage Determination for fluorodeoxyglucose positron emission tomography (FDG-PET) for Dementia and Neurodegenerative Diseases (220.6.13), we indicated that an FDG-PET scan is considered reasonable and necessary in patients with mild cognitive impairment or early dementia only in the context of an approved clinical trial that contains patient safeguards and protections to ensure proper administration, use, and evaluation of the FDG-PET scan.

Facility name	Provider Number	Date approved	State	Name of Trial	Principal Investigator
UCLA Medical Center 10833 Le Conte Avenue Los Angeles, CA 90095	HW13029	06/07/2006	CA	Early and Long-Term Value of Imaging Brain Metabolism	Dr. Daniel Silverman
Santa Monica-UCLA Medical Center 1245 16th Street Suite 105 Santa Monica, CA 90404	W11817A	01/12/2007	CA	N/A	N/A
University of Buffalo 3435 Main Street Buffalo, NY 14214	14414A	03/12/2007	NY	Metabolic Cerebral Imaging in Incipient Dementia (MCI-ID)	Dr. Daniel Silverman
Center for Alzheimer's Care, Imaging and Research (University of Utah) 650 Komas Drive Suite 106-A Salt Lake City, UT 84108	460009	02/17/2009	UT	Metabolic Cerebral Imaging in Incipient Dementia (MCI-ID)	Norman Foster, M.D.
Medical University of South Carolina 169 Ashley Avenue PO Box 250322 Charleston, SC 29425	1073605879	02/17/2009	SC	N/A	Kenneth Spicer
Cedars-Sinai Medical Center 8700 Beverly Boulevard	951644600	10/09/2009	CA	"Early and Long-term Value of Imaging Brain	Dr. Alan Waxman

Facility name	Provider Number	Date approved	State	Name of Trial	Principal Investigator
Nuc Suite 1239 Los Angeles, CA 90048				Metabolism"	

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Federal Register

Friday,
September 24, 2010

Part IV

Department of Homeland Security

8 CFR Parts 103, 204, 244 et al.
U.S. Citizenship and Immigration Services Fee Schedule; Final Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 204, 244, and 274A

[CIS No. 2490–09, DHS Docket No. USCIS–2009–0033]

RIN 1615–AB80

U.S. Citizenship and Immigration Services Fee Schedule

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS) is adjusting the fee schedule for U.S. Citizenship and Immigration Services (USCIS). USCIS conducted a comprehensive fee study, refined its cost accounting process, and determined that current fees do not recover the full costs of services provided. DHS has found that adjustment to the fee schedule is necessary to fully recover costs and maintain adequate service. In response to comments, several adjustments were made to the proposed rule published on June 11, 2010.

In this final rule, DHS: increases the fees by a weighted average of 10 percent; establishes three new fees covering USCIS costs related to processing the Regional Center Designation under the Immigrant Investor Pilot Program, Civil Surgeon Designation, and DHS Processing of Immigrant Visa requests; and adjusts the premium processing service fee by the percentage increase in inflation according to the Consumer Price Index—Urban Consumers (CPI–U) published as of July 2010. This rule also finalizes the interim rule that established the premium processing service and fees.

DATES: This rule is effective November 23, 2010. Applications or petitions mailed, postmarked, or otherwise filed on or after November 23, 2010 must include the new fee.

FOR FURTHER INFORMATION CONTACT: Timothy Rosado, Acting Chief Financial Officer, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529–2130, telephone (202) 272–1930.

SUPPLEMENTARY INFORMATION:

Table of Contents

List of Acronyms and Abbreviations

ABC—Activity–Based Costing.
CBP—U.S. Customs and Border Protection.
CFO—Chief Financial Officer.
CNMI—Commonwealth of the Northern Mariana Islands.
CNRA—Consolidated Natural Resources Act.
CPI–U—Consumer Price Index—Urban Consumers.
DHS—Department of Homeland Security.
DOS—Department of State.
EAD—Employment Authorization Document.
FASAB—Federal Accounting Standards Advisory Board.
FBI—Federal Bureau of Investigation.
FDNS—Fraud Detection and National Security.
FRFA—Final Regulatory Flexibility Analysis.
FY—Fiscal Year.
HSA—Homeland Security Act.
IEFA—Immigration Examinations Fee Account.
INA—Immigration and Nationality Act.
IOAA—Independent Offices Appropriation Act.
IRFA—Initial Regulatory Flexibility Analysis.
NNCP—National Name Check Program.
OMB—Office of Management and Budget.
OPE—Office of Public Engagement.
OPT—Optional Practical Training.
PRA—Paperwork Reduction Act.
POE—Port of Entry.
RFA—Regulatory Flexibility Act.
RFE—Request for Evidence.
SAVE—Systematic Alien Verification for Entitlements.
SMI—Secure Mail Initiative.
SQA—System Qualified Adjudication.
TPS—Temporary Protected Status.
UMRA—Unfunded Mandates Reform Act.
USCIS—U.S. Citizenship and Immigration Services.
USPS—United States Postal Service.
VAWA—Violence Against Women Act.

I. Background

DHS proposed to adjust the USCIS benefits fee schedule on June 11, 2010. *See* 75 FR 33445. The current USCIS fee schedule does not recoup the full cost of processing immigration benefits. This final rule builds on the 2008/2009 USCIS fee rule that sought to align fees with the costs of specific application types and make adjustments to some fees based on policy considerations.

This final rule also reflects FY 2010 appropriations to remove asylum, refugee, and military naturalization costs from the fee structure. *See* 75 FR 33445, 33447. Previously, surcharges were added to immigration fees to recover the cost of adjudicating asylum, refugee, and military naturalization requests. Costs for the Systematic Alien Verification for Entitlements (SAVE) program and the Office of Citizenship were also supported by fee revenue. The Administration's fee reform policy, as reflected in the Administration's budget request, moves all of these costs out of the USCIS fee structure to appropriated funds and improves the transparency of USCIS fees.

USCIS entered supporting documentation for this rulemaking and its methodology, including budget methodology and regulatory flexibility analyses, into the public docket. *See http://www.regulations.gov*, docket number USCIS–2009–0033.

II. Final Rule

A. Changes in the Final Rule

DHS is adopting the proposed rule with changes, both in response to comments and as a result of new information. The explanations of the changes are discussed in the sections dealing with comments and the subject matter of the change. No modification to the final fees is made as a result of these changes. The changes that DHS is making to the final rule are summarized as follows:

Clarify fee exemptions for requests for Civil Surgeon Designation. DHS will charge no fee for an application from a medical officer in the U.S. Armed Forces or civilian physician employed by the U.S. government who examines members of the U.S. Armed Forces, veterans of the Armed Forces, and their dependents at a U.S. military, Department of Veterans Affairs, or U.S. government facility in the United States. New 8 CFR 103.7(b)(1)(i)(SS).

Reduce the fee for an Application for Travel Document, Form I–131, when it is filed to request a Refugee Travel Document. DHS has reduced the fee for an Application for Travel Document in the final rule to $135 for a Refugee Travel Document for an adult age 16 or older, and $105 for a child under the age of 16. DHS has decided also to permit the fee for an Application for Travel Document to be waived based on inability to pay when it is based on a request for Humanitarian Parole. New 8 CFR 103.7(b)(1)(i)(M).

Provide that the fee for the Notice of Appeal or Motion, Form I–290B, may be waived *in certain cases.* DHS will allow the fee for the Notice of Appeal or Motion to be waived upon a showing of inability to pay in those cases when the appeal or motion is from the denial of an immigration benefit request where the applicant or petitioner was not required to pay a fee or that fee was waived. New 8 CFR 103.7(c)(3)(vi).

Provide for no fee for a Notice of Appeal or Motion for an appeal of a denial of a petition for a special immigrant visa from an Iraqi or Afghan national who worked for or on behalf of the U.S. Government in Iraq or Afghanistan. DHS believes it is keeping with the policy to assist this group of petitioners by allowing them to file a Notice of Appeal or Motion without a fee. New 8 CFR 103.7(b)(1)(i)(W).

Provide for a free Request for Hearing on a Decision in Naturalization Proceedings, Form N–336, and an Application for Certification of Citizenship, Form N–600, to exempt from fees requests from a member or veteran of the U.S. Armed Forces. New 8 CFR 103.7(b)(1)(i)(W), (AAA). USCIS is precluded by law from collecting a fee from members of the military for an Application for Naturalization under sections 328 and 329 of the Immigration and Nationality Act (INA). INA sections 328(b) & 329(b), 8 U.S.C. 1439(b) & 1440(b). DHS has decided to provide that military members are also exempt from the fee for these requests.

B. Corrections

DHS makes a number of technical corrections in this final rule. DHS does not make any changes to the final fees as a result of these corrections. In the preamble of the proposed rule, DHS included a table of those benefits requests that also required submission of biometrics and the related biometrics services fee. 75 FR 33445, 33461. USCIS failed to include the Application to Extend/Change Nonimmigrant Status, Form I–539, in the table of fees for immigration benefits that require biometric services in the proposed rule. *Id.* Applicants filing an Application to Extend/Change Nonimmigrant Status to request "V" nonimmigrant status are required to submit biometric information and pay the biometric fee. 8 CFR 214.15(f)(1)((ii). A "V" visa is available for certain spouses and children of lawful permanent residents who have had a petition for an immigrant visa or application for naturalization pending for 3 years or more. INA section 101(a)(15(V), 8 U.S.C. 1101(a)(15)(V). This is the only class of Application to Extend/Change Nonimmigrant Status (Form I–539) applicants that currently require biometric services. The fee for this application in this final rule is $290. New 8 CFR 103.7(b)(1(i)(X). The biometric fee is $85. New 8 CFR 103.7(b)(1)(i)(C). As a result, the inclusive fee for filing an Application to Extend/Change Nonimmigrant Status (Form I–539) for V nonimmigrants is $375. USCIS also inadvertently did not include the Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105–110), Form I–881, in the table of fees in the preamble to the proposed rule. This benefit request and its $285 fee are included in the table in this preamble for illustrative purposes. Finally, USCIS is removing the separate fee for filing an application for issuance or extension of a refugee travel document (Form I–570) because the refugee document process was consolidated into the application for travel documents (Form I–131), and the reference is obsolete.

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 requires DHS to permit aliens to apply for a waiver of any fees associated with filing an application for relief through final adjudication of the adjustment of status for relief by a Violence Against Women Act (VAWA) self-petitioner or under INA sections 101(a)(15)(T) (T visas), 101(a)(15)(U) (U visas), 106 (battered spouses of A, G, E–3, or H nonimmigrants), 240A(b)(2) (battered spouse or child of a lawful permanent resident or U.S. citizen), and 244(a)(3) (Temporary Protected Status) (as in effect on March 31, 1997). INA section 245(l)(7), 8 U.S.C. 1255(l)(7). Public Law 110–457, section 122 Stat. 5044 (Dec. 23, 2008); 22 U.S.C. 7101 *et seq.* This rule corrects the oversight from the proposed rule and provides that these groups or individuals may request a waiver of any USCIS fee to which they may be otherwise subjected. New 8 CFR 103.7(c)(3)(xvii).

USCIS inadvertently did not include the Petition to Remove the Conditions of Residence, Form I–751, and the Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Pub. L. 105–110), Form I–881, in the list of forms currently eligible for fee waivers. Proposed 8 CFR 103.7(c)(3); 75 FR 33445, 33487. These exclusions are corrected in this final rule. USCIS has determined that it will continue its policy of accepting fee waiver requests for Forms I–751 and I–

881. New 8 CFR 103.7(c)(3)(vii) and (xi); 8 CFR 240.63(a).

In the proposed rule, USCIS unintentionally replaced the word "or" in the fee for an Application to Register Permanent Residence or Adjust Status, Form I–485, with "and" in an attempt to simplify the language in current 8 CFR 103.7(b)(1). Proposed 8 CFR 103.7(b)(1)(U)(2). A discounted fee has previously been provided for "an applicant under the age of fourteen years when submitted concurrently for adjudication with the Form I–485 of a parent and the applicant is seeking to adjust status as a derivative of the parent, based on a relationship to the same individual who provides the basis for the parent's adjustment of status, or under the same legal authority as the parent." 8 CFR 103.7(b)(1). This proposed change would have eliminated the discount made available to certain children in the 2008/2009 fee rule. USCIS will continue to allow a child filing concurrently with a parent to pay the reduced fee when the child "is seeking to adjust status as a derivative of the parent, based on a relationship to the same individual who provides the basis for the parent's adjustment of status, or under the same legal authority as the parent" and has restored that language to the regulatory text in this final rule. New 8 CFR 103.7(b)(1)(U)(2)

C. Summary of Final Fees

The current USCIS Immigration Benefit Request Fee Schedule and the fees adopted in this final rule are summarized in Table 1. DHS bases its final fees on the FY 2011 President's Budget Request as outlined in the proposed rule, incorporating appropriated funding for refugee, asylum, and military naturalization processing, as well as the Office of Citizenship and the SAVE program. 75 FR 33456.

TABLE 1—IMMIGRATION BENEFIT REQUEST FEES

Form No.	Title	Current fees	Final fees
I–90	Application to Replace Permanent Resident Card	$290	$365
I–102	Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	320	330
I–129/129CW	Petition for a Nonimmigrant Worker	320	325
I–129F	Petition for Alien Fiancé(e)	455	340
I–130	Petition for Alien Relative	355	420
I–131	Application for Travel Document	305	360
I–140	Immigrant Petition for Alien Worker	475	580
I–191	Application for Advance Permission to Return to Unrelinquished Domicile	545	585
I–192	Application for Advance Permission to Enter as Nonimmigrant	545	585
I–193	Application for Waiver of Passport and/or Visa	545	585
I–212	Application for Permission to Reapply for Admission into the U.S. after Deportation or Removal	545	585
I–290B	Notice of Appeal or Motion	585	630
I–360	Petition for Amerasian, Widow(er), or Special Immigrant	375	405
I–485	Application to Register Permanent Residence or Adjust Status	930	985
I–526	Immigrant Petition by Alien Entrepreneur	1,435	1,500
I–539	Application to Extend/Change Nonimmigrant Status	300	290
I–600/600A I–800/800A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing of Orphan Petition.	670	720
I–601	Application for Waiver of Ground of Excludability	545	585
I–612	Application for Waiver of the Foreign Residence Requirement	545	585
I–687	Application for Status as a Temporary Resident under Sections 245A or 210 of the Immigration and Nationality Act.	710	1,130
I–690	Application for Waiver of Grounds of Inadmissibility	185	200
I–694	Notice of Appeal of Decision under Sections 245A or 210 of the Immigration and Nationality Act	545	755
I–698	Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of Pub. L. 99–603).	1,370	1,020
I–751	Petition to Remove the Conditions of Residence	465	505
I–765	Application for Employment Authorization	340	380
I–817	Application for Family Unity Benefits	440	435
I–824	Application for Action on an Approved Application or Petition	340	405
I–829	Petition by Entrepreneur to Remove Conditions	2,850	3,750
I–881	Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Pub. L. 105–110).	285	285
I–907	Request for Premium Processing Service	1,000	1,225
	Civil Surgeon Designation	0	615
I–924	Application for Regional Center under the Immigrant Investor Pilot Program	0	6,230
N–300	Application to File Declaration of Intention	235	250
N–336	Request for Hearing on a Decision in Naturalization Proceedings	605	650
N–400	Application for Naturalization	595	595
N–470	Application to Preserve Residence for Naturalization Purposes	305	330
N–565	Application for Replacement Naturalization/Citizenship Document	380	345
N–600/ 600K	Application for Certification of Citizenship/Application for Citizenship and Issuance of Certificate under Section 322.	460	600
	Immigrant Visa DHS Domestic Processing	0	165
Biometrics	Capturing, Processing, and Storing Biometric Information	80	85

III. Public Comments on the Proposed Rule

DHS provided a 45-day comment period following the publication of the proposed rule and received 225 comments. DHS also invited the public to access the commercial software utilized in executing the budget methodology and developing the cost model underlying the proposed rule to facilitate public understanding of the fee modeling process explained in the supporting documentation. *See* 75 FR 33445, 33447. USCIS received no requests for access to the modeling program.

On June 9, 2010, USCIS Director Alejandro Mayorkas hosted a stakeholder engagement that focused exclusively on the proposed rule. During this engagement, Director Mayorkas provided information about the rule and directed the public to the **Federal Register** and *http://www.regulations.gov* to submit comments on the proposed rule. Throughout the public comment period, USCIS Senior Leadership met with stakeholders during regularly–scheduled engagements and used these opportunities to provide information and encourage individuals and groups to submit written comments.

DHS received comments from a broad spectrum of individuals and organizations, including refugee and immigrant service and advocacy organizations, public policy and advocacy groups, members of Congress, and private citizens. Many comments addressed multiple issues or provided variations of opinion on the same substantive issues. Comments ranged from strongly supportive of the fee changes to strongly critical. Some comments provided critiques of the methodology and the proposed fee schedule, while others suggested alternative methods and funding sources to finance USCIS operations.

DHS has considered the comments received and all other materials contained in the docket in preparing this final rule. The final rule does not address comments seeking changes in United States statutes; changes in regulations or applications and petitions unrelated to, or not addressed by, the proposed rule; changes in procedures of other components within DHS or other agencies; or the resolution of any other issues not within the scope of the rulemaking or the authority of DHS. All comments may be reviewed at the Federal Docket Management System (FDMS) at *www.regulations.gov*, docket number USCIS–2009–0033. The public may also review the docket upon request by contacting USCIS through the contact information listed in this rule.

A. Authority to Promulgate Fees

Several commenters questioned DHS's authority to promulgate the rule. Specific comments challenged DHS's authority to charge specific amounts for specific fees, to cross–subsidize fees, and to make policy decisions that affect the amount of specific fees. These comments asserted both generally, and in regard to specific fees, that DHS's proposed fee schedule was not in conformity with different provisions of law, policy, and guidance. Some commenters suggested that administrative and overhead costs were not related to the provision of services and should be excluded. Other commenters suggested that enforcement costs should be excluded from the fees, while others recommended that all of the enforcement costs of immigration and law enforcement agencies should be recovered by fees. Several commenters asserted that expenses not related to the provision of "adjudication and naturalization services" are matters of public benefit and should instead be funded by appropriation. Commenters also suggested that DHS was not authorized to "bundle" fees or to cross–subsidize costs of one service with funding from another fee.

Underlying these comments is the issue of compliance with the authorizing statute and conformance with internal Executive Branch guidance. Although some commenters recognized that DHS is permitted to fund all USCIS operations from fees, they asserted there is no statutory mandate requiring it to do so. These comments raise the issue of the general structure of the Immigration Examinations Fee Account (IEFA), and whether fees can legally recover certain costs.

DHS disagrees. DHS outlined its authority to promulgate the USCIS fee schedule in the proposed rule. 75 FR 33445, 33447–8. DHS carefully reviews its authority to act and provides a more detailed explanation of its legislative authority and management guidance in response to these comments.

1. Immigration and Nationality Act Section 286(m)

The Immigration and Nationality Act, as amended, provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including services provided without charge to asylum applicants and certain other immigrant applicants. INA section 286(m), 8 U.S.C. 1356(m).[1] The INA provides that the fees may recover administrative costs as well. The fee revenue collected under section 286(m) of the INA remains available to DHS to provide immigration and naturalization benefits and ensures the collection, safeguarding, and accounting of fees by USCIS. INA section 286(n), 8 U.S.C. 1356(n).

Congress also has imposed specific fixed fees, such as the $7 individual immigration inspection fee at ports of entry. INA section 286(d), 8 U.S.C. 1356(d). Additionally, Congress has established certain fixed fees and provided a specific method for adjustment of those fees, such as the premium processing fee. INA section 286(u), 8 U.S.C. 1356(u). DHS considers the structure of all of these provisions and the relationship between fee requirements and appropriated funds in reaching decisions about the USCIS fee schedule.

INA section 286(m), 8 U.S.C. 1356(m), contains both silence and ambiguity under *Chevron USA, Inc.* v. *Natural Resources Defense Council,* 467 U.S. 837 (1984). Congress has not spoken directly, for example, to a number of issues present in this section, including the scope of application of the section or subsidizing operations from other fees.[2] Congress has provided that USCIS recover costs "including the costs of similar services" provided to "asylum applicants and other immigrants." Congress has not detailed the determination of what costs are to be included. Moreover, "other immigrants" has a broad meaning under the INA because the term "immigrant" is defined by exclusion to mean "every alien

[1] INA section 286(m), 8 U.S.C. 1356(m), provides, in pertinent part that notwithstanding any other provisions of law, all adjudication fees as are designated by the [Secretary of Homeland Security] in regulations shall be deposited as offsetting receipts into a separate account entitled "Immigration Examinations Fee Account" in the Treasury of the United States, whether collected directly by the [Secretary] or through clerks of courts: *Provided, however,* * * *: *Provided further,* That fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.

Paragraph (n) provides that deposited funds remain available until expended "for expenses in providing immigration adjudication and naturalization services and the collection, safeguarding and accounting for fees deposited in and funds reimbursed from the 'Immigration Examinations Fee Account'."

[2] Congress's intent in using individual terms, such as "full cost," is clear, although the totality of the section is ambiguous.

except an alien who is within one of the following classes of nonimmigrant aliens.'' INA section 101(a)(15), 8 U.S.C. 1101(a)(15). The extensive listing of exclusions from ''immigrant'' by the non-immigrant visa classes is replete with ambiguity evidenced by the detailed and complex regulations and judicial interpretations of those provisions.

Congress additionally provides annual appropriations for specific USCIS programs. Appropriated funding for FY 2010 included asylum and refugee operations (4th Quarter contingency funding), and military naturalization surcharge costs ($55 million); E-Verify ($137 million); immigrant integration ($11 million); REAL ID Act implementation ($10 million); and data center consolidation ($11 million). Department of Homeland Security Appropriations Act, 2010, Public Law 111–83, title IV, 123 Stat. 2142, 2164–5 (Oct. 28, 2009) (DHS Appropriation Act 2010). Providing these limited funds against the backdrop of the broad immigration examinations fee statute—together forming the totality of funding available for USCIS operations—requires that all other costs relating to USCIS and adjudication operations are funded from fees. In appropriating specific funds, Congress approves of the fee amounts promulgated by DHS for the operation of USCIS by approving the total expenditure level. When no appropriations are received, or fees are statutorily set at a level that does not recover costs, or DHS determines that a type of application should be exempt from payment of fees, USCIS must use funds derived from other fee applications to fund overall requirements and general operations.

Before the IEFA was created in 1988, all activities related to case processing were funded by appropriations. *See* Public Law 100–459, section 209, 102 Stat. 2186 (Oct. 1, 1988). While fees were charged prior to 1988, those fees were treated as miscellaneous receipts of the United States Treasury and deposited in the General Fund. Those fees were not available to the Immigration and Naturalization Service for expenditure. The IEFA was created to provide an alternative to appropriations. As many of the commenters stated, the law does not preclude the use of appropriations to subsidize fee receipts to fund operations. In the absence of appropriations, however, USCIS's only funding source is fee revenue. Of the $386,000,000 requested in the FY 2011 Budget, $259,000,000 will cover the estimated cost of asylum and refugee surcharges ($207 million), the SAVE program ($34 million), and the Office of Citizenship ($18 million) for FY 2011. The fees in this rule assume that the costs of these activities will not be financed by fee revenue and, instead, paid with appropriated funds.

Commenters suggested that only the activities directly relating to specific adjudications should be charged to those who apply for the benefits. These comments rely on statutory authority separate from the authority for these fees. The general authority for the United States to impose and collect ''user'' fees stems from the Independent Offices Appropriation Act, 1952 (IOAA), 31 U.S.C. 9701(b). Under the IOAA, a ''value'' to the recipient is a key threshold factor and the costs of ''public interest'' have been effectively included within the fees. *National Cable Television Ass'n* v. *United States,* 415 U.S. 336 (1974); *FPC* v. *New England Power Co.,* 415 U.S. 345 (1974); *Seafarers Internat'l Union* v. *Coast Guard,* 81 F.3d 179, 183 (DC Cir. 1996). In *New England Power Co.,* the Supreme Court held that the IOAA authorizes ''a reasonable charge'' to be made to ''each identifiable recipient for a measurable unit or amount of Government service or property from which [the recipient] derives a special benefit.'' *See* 415 U.S. at 349 (quoting Bureau of the Budget Circular No. A–25 (Sept. 23, 1959)). The Court held that such fees may be assessed to an individual even when the benefits from the service provided are not only special to the recipient but widespread to the general public as a whole. *Id. See also National Cable Television Ass'n,* 415 U.S. at 343–44. So long as the service provides a special benefit above and beyond that which accrues to the public at large to a readily-identifiable individual, the fee is permissible. *New England Power,* 415 U.S. at 349–51 & n. 3.

Prior to the enactment of INA section 286(m) 8 U.S.C. 1356(m), fees charged for immigration services were governed by the IOAA and were judicially reviewed under the IOAA. A more elementary cost analysis than that currently used was upheld by the courts. *Ayuda, Inc.* v. *Attorney General,* 661 F. Supp. 33 (D.D.C. 1987), *aff'd,* 848 F.2d 1297 (DC Cir. 1988). As the Court of Appeals in *Ayuda* stressed, the procedures were ''triggered only at the instance of the individual who seeks, obviously, to benefit from them.'' 848 F.2d at 1301.

Congress changed this formulation for immigration fees in the enactment of INA section 286(m) and the creation of the IEFA. DHS's authority under INA section 286(m) is an exception to the limitations of the IOAA. 31 U.S.C. 9701(c). The relevant, second *proviso* was added to the INA after the Court of Appeals decided *Ayuda* under the IOAA. *See* Public Law 101–515, section 210(d)(1), (2), 104 Stat. 2120, 2121 (Nov. 5, 1990). The statutory provisions in section 286(m) are broader than the IOAA, authorizing DHS to recover the full cost of providing benefits and ensuring sufficient revenues to invest in improved service and technology. Even though the requirements of the IOAA do not apply in developing these fees, DHS and USCIS are mindful of the need to explain the process to the general public and have done so. *Cf. Engine Manufacturers Assoc.* v. *EPA,* 20 F.3d 1177 (DC Cir. 1994).

Accordingly, DHS disagrees with the commenters' suggestions that it has exceeded its authority to promulgate fees to recover the full cost of operating USCIS. Congress and the Executive Branch have been in agreement that the full cost of operating USCIS should come from the sum of the general IEFA fee account, several other specific fee-driven provisions of statute, and annual appropriated funds. The balance of the funding between these accounts is struck by Congress in determining the annual appropriation, and DHS and USCIS negotiate that result with Congress and adjust as practical the total amount charged as fees, which is ultimately approved by Congress as the amount that may be expended.

2. Biometrics for Temporary Protected Status

A commenter expressed specific concern that the proposed charges to the biometric services fee in the proposed fee rule are unlawful in their application to the temporary protected status (TPS) program. TPS is a temporary benefit that eligible aliens in the United States may request if their home countries have been designated for TPS by the Secretary based on temporary and extraordinary conditions that prevent such aliens from being able to return to their countries safely, or in certain circumstances, where their countries are unable to handle their return adequately. *See generally* INA section 244, 8 U.S.C. 1254a.

The commenter suggested that if at least certain TPS re-registrants are not exempt from the biometric services fees, then the proposed changes may run afoul of the statutory constraints on fees charged to TPS registrants because the biometric services fee would: (1) Charge for services that are not provided; (2) charge for services that do not constitute ''biometric services;'' and (3) charge for services that are not necessary. Based on the potential problems with requiring all TPS re-registrants to pay the biometric services fee, the commenter respectfully urged USCIS to interpret its fee rule to exempt TPS re-registrants from paying the biometric services fee, or impose a reduced fee for TPS re-registrants whose biometric information does not need to be collected. The commenter additionally suggested that initial TPS registrants should not be charged the costs of background checks that are already subsumed in the $50 TPS registration fee. INA section 244(c)(1)(B), 8 U.S.C. 1254a(c)(1)(B) (authorizing "payment of a reasonable fee as a condition of registering [for TPS] . * * * The amount of any such fee *shall not exceed $50.*" (emphasis added)); Department of Homeland Security Appropriations Act, 2010, Public Law 111–83, section 549, 123 Stat. 2177 (Oct. 28. 2009); 8 U.S.C. 1254b(a) (authorizing "fees for fingerprinting services, biometric services, and other necessary services [to] be collected when administering the program described in section 1254a"); 75 FR 33445, 33446–01, 33447. The commenter asserts that because of these limits, a $50 TPS application fee is imposed only once, upon initial registration.

The commenter noted that it represents a nationwide class of Central American TPS applicants, in the currently pending class action challenging USCIS biometric fee requirements.[3] The majority of the comment reiterated the arguments that the plaintiffs made in the litigation. DHS agrees with the reasoning of the District Court in dismissing that case.[4]

DHS had proposed in that section that no biometric services fee would be charged when "[t]here is no fee for the associated benefit request that was, or is, being submitted." *See* proposed 8 CFR 103.7(b)(1)(i)(C)(*2*); 75 FR 33445, 33484. DHS proposed this change both as a humanitarian measure and for administrative efficiency for certain immigration benefit requests for which DHS had previously provided an exemption from the initial immigration benefit request fee for the underlying benefit request in the FY 2008/2009 fee rule. The 2008/2009 fee rule promulgated several general exemptions to immigration benefit request fees. For example, the rule provided that there was no fee for a Petition for Amerasian, Widow(er), or Special Immigrant, Form I–360, filed by an individual seeking classification as an Amerasian; a self-petitioning battered or abused spouse, parent, or child of a United States citizen or lawful permanent resident; or a Special Immigrant Juvenile. *See* 72 FR 29851 (May 30, 2007), 29865, 29873. Fee exemptions were also provided for four small volume programs: victims of human trafficking (T visas), victims of violent crime (U visas), VAWA self-petitioners, and Special Immigrant Juveniles. The reasons for providing these specific application and petition fee exemptions were fully discussed in the 2008/2009 proposed fee rule. *See* 72 FR 4888, 4903 (Feb. 1, 2007). In that rule, DHS also provided for additional fee waivers, such as the biometric fee, where individuals demonstrate an inability to pay. *See* 72 FR 29851, 29874; 8 CFR 103.7(c)(5).

Although DHS exempted individuals requesting the specific humanitarian benefits noted above from having to pay the immigration benefit request fees in the FY 2008/2009 fee rule, DHS did not specifically exempt them, on a blanket basis, from also paying the associated biometrics fee. At that time, DHS only provided eligibility for an individualized biometrics fee waiver where the applicant or petitioner could show an inability to pay the biometrics fee under 8 CFR 103.7(c). There has been continuing confusion since the FY 2008/2009 fee rule about whether the biometric services fee is required if the immigration benefit request fee is not required. USCIS has accommodated some of the concerns by administratively treating a request for a fee waiver of the underlying benefit fee as also a request for a waiver of the biometrics fee, and not requiring a duplicate, simultaneous or subsequent request to waive that fee. In the proposed rule, DHS proposed an amendment in 8 CFR 103.7(b)(1)(i)(C)(*2*) to simplify the process so that a biometrics fee would also not be required for those particular fee-exempt immigration benefit requests that DHS considered when deciding to provide fee exemptions. DHS also intended that no biometrics fee would be required in cases where any immigration benefit request fee for the associated benefit was waived, on a case-by-case basis, under 8 CFR 103.7(c).

The proposed revision and the final rule implement Congressional enactment of the Department of Homeland Security Appropriations Act, 2010, specifying that: "In addition to collection of registration fees described in section 244(c)(1)(B) of the [INA] (8 U.S.C. 1254a(c)(1)(B)), fees for fingerprinting services, biometric services, and other necessary services may be collected when administering the [TPS] program described in section 244 of such Act." Public Law 111–83, 123 Stat. 2142 (Oct. 28, 2009).

Through the language that was initially proposed for 8 CFR 103.7(b)(1)(i)(C)(*2*) and consistent with current TPS fee waiver practice, DHS intended that the biometrics fee would not be required from an initial TPS applicant who was granted a waiver of the initial TPS application fee based on inability to pay. However, DHS did not intend that the proposed regulatory language should be construed to exempt from payment of the biometric services fee *all* TPS beneficiaries, aged 14 and older, who apply to re-register for TPS, regardless of inability to pay. Although applicants for TPS re-registration do not currently submit the $50 for the Application for Temporary Protected Status, Form I–821, after their initial TPS applications, TPS beneficiaries have often held TPS status for several years, and they have been eligible for employment authorization at least since obtaining TPS, and earlier if they were found eligible for TPS temporary treatment benefits. *See* 8 CFR 244.5 and 244.12. Most TPS beneficiaries, in fact, have employment authorization documents.

Unlike many of the initial applicants for the fee-exempt humanitarian benefits, such as T and U visas, special immigrant juveniles, and certain self-petitioning battered aliens, TPS beneficiaries seeking re-registration have work authorization and thus, generally have less need for a blanket exemption from the biometric services fee. If all such re-registering TPS beneficiaries were exempt from the biometrics fee, the cost of providing them with biometric services would need to be borne by other applicants and petitioners for immigration benefits. DHS does not perceive a need to shift the biometrics costs for re-registering TPS beneficiaries onto other individuals

[3] *Bautista-Perez* v. *Holder,* No. 3:07–cv–04192–TEH (N.D. Cal.). *See* 2009 WL 2031759 (N.D. Cal. July 9, 2009) (order denying plaintiff's motion for partial summary judgment and granting in part and denying in part defendants' cross-motion for summary judgment).

[4] *Bautista-Perez* v. *Holder,* No. 3:07–cv–04192–TEH (N.D. Cal. Sept. 15, 2010), Dk. No. 153 (order granting defendant's motion to dismiss with leave to amend complaint). "The strict accounting that Plaintiffs demand for the biometric services fee is unwarranted by the statute. [Pub. L. 111–83, section 549, 123 Stat. 2142 (Oct. 28, 2009)] does not purport to dictate how USCIS calculates the fee for this service; it merely authorizes the charging of fees for "necessary services * * * when administering" the TPS program. USCIS does not defy that authority by charging a standard fee even though some applicants require more services than others. * * * Plaintiffs argue, in essence, that section 549 requires every component of the fee to be directly tied to the fee-payer's TPS application. The Court does not see how section 549 gives it the authority to scrutinize the calculation of USCIS's biometric services fee in such painstaking detail." Dk. No. 154, slip. op. at 15.

through a blanket biometrics fee exemption. However, DHS will continue to provide, on an individual basis, a fee waiver of the biometrics fee when a re-registering TPS beneficiary does demonstrate an inability to pay the $85 biometric fee. DHS has revised the language of this provision to ensure clarity and to alleviate potential confusion. New 8 CFR 103.7(b)(1)(i)(C).

3. Bundling

One commenter specifically argued that defects in the current regulation persist in the proposed fee rule in that both the current regulations and the proposed rule exceed the authority granted under INA section 286(m), 8 U.S.C. 1356(m), by "bundling" certain benefits and associated fees. Specifically, the commenter argued that DHS erred in the 2008/2009 fee rule by: (1) Impermissibly "bundling" the fee for applications to adjust status with the fees for interim benefits, requiring applicants to pay for services that they do not want or need, cannot use, and/or do not actually receive and (2) improperly including in application and petition fees the costs of agency activities that are distantly related, if at all, to the provision of immigration services to fee-paying applicants.[5]

DHS disagrees with the commenter's belief that the law requires that IEFA fees be tied to the actual services provided. As explained above, the cost-to-services linkage under the IOAA is not applicable to fees under the IEFA, which is an exception to the IOAA. The IEFA is administered using the cost modeling similar to that used in IOAA fees, but necessarily includes administrative decisions to assign overhead costs that cannot be readily associated with specific activities. Similarly, administrative discretion must be applied when a substantial cost would be generated in attempting to drive costs to highly individualized objects, such as individual applicants. In effect, the Administration bundles certain costs to fees because it may be more efficient to do so and can create a total lower cost of operation. DHS determined to bundle the fees as a resolution to simplify interim benefits and reduce interim benefit applications. The costs of administering individualized fee determinations exceed the benefits to the totality of applicants and petitioners, and the government. 72 FR 29851, 29861 (providing multiple fee options based on who typically requests interim benefits, when records indicate that the vast majority of applicants do request interim benefits, would be too complicated and costly for USCIS to administer). USCIS may reconsider this evaluation during a fee review cycle after the implementation of electronic records. DHS and USCIS may be able to provide this type of customized fee structure in the future, but cannot effectively do so at this time.

The commenter's concern reflects a limited view of the decision-making process. Policy decisions inherently made by regulations directly affect the fee structure. For example, the policy decision to exempt aliens who are victims of a severe form of trafficking in persons and who assist law enforcement in the investigation or prosecution of the acts of trafficking (T Visa), and aliens who are victims of certain crimes and are being helpful to the investigation or prosecution of those crimes (U Visa), from visa fees, the cost of processing those fee-exempt visas must be recovered by fees charged against other applications. INA sections 101(a)(15)(T), (U), 214(o), (p), 8 U.S.C. 1101(a)(15)(T), (U), and 1184(o), (p); 8 CFR 214.11, 214.14, 103.7(c)(5)(iii); *Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status,* 73 FR 75540 (Dec. 12, 2008). Each such decision affects the totality of the fee-paying applicants and petitioners and removes some source of revenue. Inherently, and consistent with INA section 286(m), 8 U.S.C. 1356(m), that revenue is recovered from other fee-paying applicants and petitioners.

The commenter's suggestion that DHS lacks authority to make policy decisions adjusting the amount of fees also overlooks the reality of the two contiguous and complete sources of funding for USCIS. The totality of funding for USCIS from two sources effectively means that if one source is insufficient, the other source must make up the difference, or workload will not be performed at the prescribed level, itself a policy choice.

Policy decisions made regarding the implementation of the Immigration and Nationality Act and other immigration laws inherently and directly affect USCIS budget requirements. Both INA section 286(m) and Congress, in annual appropriations and expenditure level approvals, recognize this point. The Administration has taken steps within the enacted FY 2010 appropriations for USCIS to move away from fee-generated revenue to support asylum, refugee, and military naturalization costs. The Administration seeks to improve the linkage between fees paid by USCIS applicants and petitioners and the cost of programs and activities to provide immigration benefits as a matter of policy, not a matter of law.

4. Fraud Detection and National Security (FDNS) and Other Program Costs

Several commenters suggested that the proposed rule should have excluded any law enforcement or national security functions, such as the Fraud Detection and National Security (FDNS) operations. DHS disagrees with these suggested restrictions and continues to believe that it may fund, as a matter of discretion, all of USCIS operations, or more, from fees.

Other commenters suggested that additional costs should be recovered through the IEFA account. Implicitly, these comments suggest an understanding that the authority of DHS under the INA is broader than DHS is, in fact, currently exercising.

The realignment of functions within USCIS to create the FDNS was a consolidation of specific previous functions from benefit programs to streamline operations. In a sense, FDNS was created to consolidate the anti-fraud efforts within USCIS that have traditionally been funded from fees. These anti-fraud efforts are not impermissible under INA section 286(m), 8 U.S.C. 1356(m). DHS does not opine on whether the anti-fraud efforts of FDNS would be permissible under the IOAA, but only that INA section 286(m) is an exception to the IOAA and the Administration is permitted to decide, as a matter of policy, to include these charges within the IEFA. 31 U.S.C. 9701(c).

As for anti-fraud, law enforcement, and national security efforts, DHS believes that the commenters misunderstand the nature of these efforts. These efforts are integral to determining an applicant's eligibility for a benefit, and to maintain the integrity of the immigration system. Background check information helps benefit public safety and security by identifying persons who may be ineligible for a benefit due to a criminal background. Further, recent fraud detection efforts have resulted in changes to several USCIS programs, such as the final rule, Special Immigrant and Nonimmigrant Religious Workers, published specifically to address concerns about the integrity of the religious worker program that were uncovered by USCIS fraud detection experts. *See* 73 FR 72276 (Nov. 26, 2008). The filing of an immigration benefit request is why security checks, fraud reviews, and investigations of possible violations are

[5] The commenter makes the same arguments that it made in *Barahona* v. *Napolitano,* No. 1:10–cv–1574–SAS (S.D.N.Y.).

needed. Thus it is appropriate for the full costs of these efforts to be funded by fees paid by those who file such requests.

Accordingly, DHS disagrees that the inclusion of FDNS in the fee calculation is inappropriate and will continue to fund that function through fees. This final rule establishes a level of fees sufficient to recover the full cost of operating USCIS, including the anti-fraud functions of FDNS. The rule has not been amended to include other costs that could legally be charged or to exclude any costs of operating USCIS.

5. Office of Management and Budget Circulars

Several commenters also suggested that DHS's authority to promulgate fees is limited by Office of Management and Budget (OMB) Circular No. A–25, which "establishes Federal policy regarding fees assessed for Government services" and defines the term "full cost." OMB Circular A–25, *User Charges,* 58 FR 38142 (July 15, 1993), available at *http://www.whitehouse.gov/omb/circulars_a025. See FPC* v. *New England Power Co.,* 415 U.S. at 349–51. DHS agrees that OMB Circular A–25 sets federal policy and provides guidance for user fees under the IOAA, 31 U.S.C. 9701, discussed above, but disagrees that Circular A–25 applies under INA section 286(m), 8 U.S.C. 1356(m). The guidance of OMB Circular A–25 is internal Executive Branch policy guidance, direction from the Office of Management and Budget to the agencies on the subject of user fees under the IOAA.

As the Circular explains, OMB issued it pursuant to "Title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701)" (IOAA). *See* Circular A–25, section 3 ("Authority"). The Circular goes on to explain the relationship between the Circular's provisions and the IOAA, and between the Circular's provisions and other fee statutes: "The provisions of the Circular shall be applied by agencies in their assessment of user charges under the IOAA. In addition, this Circular provides guidance to agencies regarding their assessment of user charges under other statutes." *See id.,* section 4b.

Thus, as the Circular explains, its provisions are "guidance to agencies regarding their assessment of user charges under other statutes." One of these "other statutes" is INA section 286(m), 8 U.S.C. 1356(m). Accordingly, with respect to the implementation of INA section 286(m), Circular A–25 has the status of internal Executive Branch policy guidance. *See HHS* v. *FLRA,* 844 F.2d 1087, 1095–96 (4th Cir. 1988) (en banc) (OMB Circular A–76 is internal Executive Branch guidance). As Circular A–25 is internal Executive Branch guidance with respect to the establishment of fees under INA section 286(m), the Circular does not impose legally-binding (i.e., judicially enforceable) limits on DHS' authority to promulgate fees under section 286(m). *See HHS* v. *FLRA, id.* (as internal Executive Branch guidance, Circular A–76 is not judicially enforceable).

One commenter stated that OMB Circular A–25 requires USCIS to identify the costs for each service and directly match those costs to the fee charged. The commenter suggested that the expenses for operating USCIS included in the calculation of costs that must be covered from the collection of fees exceeded what was appropriate. The commenter suggested that USCIS expenses recovered and fees paid must relate to the specific service, and that DHS is not authorized to include costs that are unrelated or only tangentially related to the cost of providing the services. For example, the commenter suggested that DHS is not authorized to recover with fees the costs of the SAVE and E-Verify programs, or expenses related to anti-fraud, law enforcement, and national security efforts.

As clearly stated in the proposed rule, DHS begins its fee process, consistent with OMB Circular A–25, by engaging in activity-based costing (ABC). *See* 75 FR 33445, 33448. USCIS adds to the ABC model result the necessary amount for overhead and other costs not driven by the cost of services. *See id.* This is consistent with full cost recovery. The term "full cost" used in INA section 286(m), 8 U.S.C. 1356(m), means the costs of operating USCIS, less any appropriated funding. DHS makes adjustments based on Administration policy within its discretion under the INA. *See* 75 FR 33445, 33448. Thus, the fees established in this rule are necessary, rational, and reasonable, and comply with the INA and applicable guidance. The decision to structure USCIS fees as proposed and in this final rule is the culmination of an administrative process that conforms with Administration policy. As stated in the proposed rule, USCIS has historically been funded almost exclusively by fees. *See* 75 FR 33445, 33447. Also, the INA provides authority to charge fees that are broader than the IOAA and Circular A–25.

DHS understands the desire of the commenters. DHS's interpretation of INA section 286(m) should not be construed to mean that the Administration believes there is no merit in relating fees to specific services rendered. The President has proposed to remove $259 million from the USCIS fee base through appropriations for FY2011. Congressional support for the first stage of this process is evidenced by the FY2010 appropriation. The process by which increased linkage can be made depends upon the Congress. While DHS agrees with the commenter that certain costs "should" be borne by appropriation, until Congress provides that appropriation, these costs must be borne by the fee structure under INA section 286(m), 8 U.S.C. 1356(m). DHS has already begun preparing for its next biennial immigration fee review. The next fee review will consider further refinements to how immigration fees are determined, including the level by which fees match assignable, associated, and indirect costs.

6. Accounting Standards

Commenters implicitly questioned whether DHS and USCIS complied with appropriate accounting standards in the proposed fee rule. The proposed fee rule and this final fee rule reflect DHS conformity with the requirements of the Chief Financial Officers Act of 1990 (CFO Act), 31 U.S.C. 901–03, that each agency's Chief Financial Officer (CFO) "review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value." *Id.* at 902(a)(8).

Like OMB Circular A–25, the cost accounting concepts and standards developed by the Federal Accounting Standards Advisory Board (FASAB) define "full cost" to include: "(1) The costs of resources consumed by the segment that directly or indirectly contribute to the output, and (2) the costs of identifiable supporting services provided by other responsibility segments within the reporting entity, and by other reporting entities." Federal Accounting Standards Advisory Board, Statements of Financial Accounting Concepts and Standards: Pronouncements as Amended 437 (June 2009). To determine the full cost of a service or services, FASAB identifies various classifications of costs to be included and recommends various methods of cost assignment. As generally accepted accounting principles, FASAB's standards are conventions of federal financial accounting, not statutory or regulatory requirements. As the Supreme Court pointed out in *Shalala* v. *Guernsey Memorial Hospital,* "Financial accounting is not a science. It addresses many questions as to which the answers are uncertain and is a 'process [that] involves continuous judgments and estimates.' " 514 U.S. 87, 100 (1995) (citing, R. Kay & D. Searfoss, Handbook of Accounting and Auditing, ch. 5, p. 7–8 (2d ed. 1989)).

As explained above, DHS applies the discretion provided in INA section 286(m), 8 U.S.C. 1356(m), in a manner consistent with its responsibilities for operation of government and the goals of providing immigration services and transparent accounting. DHS applies that judgment to: (1) Develop activity-based costing to establish basic fee setting parameters, (2) apply administrative judgment to allocate overhead and other indirect costs, and (3) apply policy judgments to effectuate the overall Administration policy. The "full" cost to the Government of operating USCIS, less any appropriated funding, has been the historical total basis for establishing the cost basis for the fees, and Congress has consistently recognized this concept in its annual appropriations. This final rule, therefore, reflects the authority granted to DHS by INA section 286(m) and other statutes.

In sum, DHS disagrees with the commenters' assertions that DHS has exceeded its authority. DHS has implemented the requirements of INA section 286(m) appropriately and has made no changes in the final rule in light of these comments.

B. Relative Amount of Fees

A number of commenters argued that the proposed fees were too low, while others thought the fees were too high. Some expressed general concerns about immigration levels and stated that a fee increase would reduce the number of people seeking immigration benefits. Others argued that the fees were too high, especially when filing for families, and were a barrier to family unification. Many commenters cited the general state of the economy as a reason to delay fee increases.

1. Recovery of Additional Costs

Some of the commenters who agreed with fee increases asserted that fees should be high enough to cover all USCIS costs related to the processing of immigration benefits so that taxpayers are not asked to pay for someone entering, residing, or seeking immigration services in the United States. Some commenters favored increasing fees for immigration benefit requests filed by businesses. Other commenters supported a fee increase specifically for the purpose of improving customer service. Several commenters suggested that fees should not be based on USCIS costs, but on the value of the benefit received by the applicant (*e.g.,* United States citizenship). These commenters expressed the view that immigration benefits are highly valuable and worthy of special consideration. Other commenters suggested that increasing specific fees, such as for an Application to Extend/Change Nonimmigrant Status, Form I–539, instead of implementing their proposed fee reduction, would mitigate other fee increases.

Filing fees established under this rule are higher than the current fees but are based only on the estimated relative costs associated with processing immigration benefit requests and other costs of operating USCIS. Although a number of commenters suggested that USCIS increase fees further, USCIS fees are based on the relative identifiable costs associated with providing each particular benefit or service in adherence with government-wide fee setting guidelines in OMB Circular A–25, the CFO Act, and FASAB guidance. Filing fees do not function as tariffs, generate general revenue to support broader policy decisions, or like fines to deter unwanted behavior. DHS has maintained the Application for Naturalization, N–400, fee at its current level to avoid any possibility of providing a disincentive for people to apply for naturalization. In addition, DHS has provided fee exemptions of certain fee based on humanitarian grounds and the ability to request a waiver of certain fees based on financial considerations, so that certain populations do not choose to not request benefits to which they may be entitled because of the fee. Besides those policies, filing fees are not used to favor businesses, families, geographical areas, influence larger public policy in favor of or in opposition to immigration, limit immigration, support broader infrastructure, or impact costs beyond USCIS.

DHS designed this rule to establish fees sufficient to reimburse the costs of processing immigration benefit requests and the related operating costs of USCIS. While USCIS has authority to collect fees for broader government-wide costs of administering the United States immigration system, DHS has chosen to structure the fees to recover only the projected full operational cost. USCIS believes that this decision is consistent with broader Administration policy on user fees and the intent of Congress in the enactment of, and amendments to, INA section 286(m), 8 U.S.C. 1356(m). Accordingly, DHS has not changed its proposed fees based on these comments.

2. Proposed Fees Are Unreasonably High

A number of comments opposed the proposed fee increases in general terms or highlighted particular immigration benefit requests and argued that the proposed fee increases would effectively exclude aliens generally, or groups of aliens, from immigration benefits and services. Some suggested that fee increases send the wrong message to people who are attempting to comply with the immigration benefit process and United States immigration laws, and that higher fees may discourage legal immigration while encouraging aliens to attempt to enter the United States and work illegally. Other commenters questioned how DHS could raise fees again in light of the 2007 fee increase.

a. Barrier to Family Reunification.

Some commenters asserted that the fees caused an undue burden on families seeking to be reunited or maintain legal status. Commenters mentioned the burden caused when multiple applications or petitions must be filed for family members.

USCIS understands the concerns of these commenters and their desire for families to remain intact while benefiting from the advantages of U.S. lawful residence and citizenship. United States immigration laws and policy generally favor immigration of families by giving preference to certain immigrants who are related to an immigrant or United States citizen. USCIS understands that family-based applications and petitions could involve multiple requests and thus multiple fees, depending on the relationships and family size. USCIS filing fees are usually a relatively small portion of the overall cost of travel, legal expenses, relocation, and other expenses incurred in immigrating to the United States. In addition, since fees provide the capacity necessary for USCIS to do the work associated with the filing, when fees do not fully recover costs USCIS is unable to maintain sufficient capacity to process the work. This diminished capacity could significantly delay immigration, an impact which can be far more of a burden on a family than the proposed change in filing fee. In any event, USCIS does not believe that the increases made in this rule will significantly influence a decision of a family member to petition for a family member to join him or her in the United States. As a result, no changes are made in the final rule as a result of these comments.

b. Fee Increases Reduce the Number of Filers.

Many commenters stated that fee increases would reduce the number of filers and curb immigration to the United States. There are many complex variables that influence the demand for immigration benefits including: the economy, Congressional policy debates, state legislative actions, business cycles, and benefit fees. Obviously, benefit fees only represents one of these determinants. The commenters did not provide reference data or specifically articulate how benefit fees might impact filing volume. Further, DHS did not study the ramifications of raising this fee, as the purpose of this rulemaking is to set fees to recover costs.

Commenters also touched on the larger issues of immigration policy that aliens should be encouraged to immigrate to the United States. As noted above in relation to the opposite position, the purpose of the fee schedule is not to establish broad immigration policy or induce individuals to immigrate to the United States, but to recover the costs necessary to operate USCIS. Accordingly, DHS did not adjust the fee schedule in response to these comments in this final rule.

c. Income-Based Fee Structure.

A number of commenters suggested that USCIS should base fee levels on the applicant's or petitioner's ability to pay or status as an employer. Under a system of full cost recovery through fees, this approach would mean lower fees for some based on income but higher fees for other applicants irrespective of how much it actually costs USCIS to adjudicate their application.

Adjusting fee levels based on income would be administratively complex and would require higher costs to administer. A tiered fee system would require staff dedicated to income verification and necessitate significant information system changes to accommodate multiple fee scenarios. The costs and administrative burden associated with implementing such a system would be unreasonable and would cause additional fee increases. USCIS therefore does not support such a system at this time. DHS has not changed the rule in response to these comments.

d. Supplementary Costs to Applicants and Petitioners.

Many commenters suggested that increasing fees would adversely impact the applicants' and petitioners' ability to pay for additional services, such as legal fees or notaries, and, therefore, DHS should reduce fees. These comments included specific comments that an increase in fees would reduce the ability of applicants and petitioners to pay fees charged by non-profit organizations representing the applicants and petitioners before USCIS and other immigration components of DHS, and before immigration judges and the Board of Immigration Appeals within the Department of Justice.

DHS understands the comments, but has made no change to the rule as a result of them. Other regulations address the nominal costs that non-profit accredited organizations may charge. *See* 8 CFR 292.2(a)(1). If those or other costs adversely impact the private organizations, it is not a function of DHS to ensure that the organizations have sufficient funds.

3. Comments on Specific Fees and Adjustments

While many commenters opposed the fee increase in general, some commenters took issue with increases to specific fees and fees for certain categories of applicants and petitioners. Commenters also suggested that some fees be increased in order to reduce increases to other fees or to reduce other fees.

a. Student Employment Authorization.

Some commenters requested that fees for certain classes of non-immigrants, such as students, be reduced. Specifically, commenters noted that the filing fee for an Application for Employment Authorization, Form I–765, or employment authorization document (EAD) is particularly burdensome to students who may only have seasonal employment. These commenters expressed significant concerns about the fee's effect on the limited financial capability of most international students in F–1 visa status and their ability to apply for work authorization when they choose to participate in the Optional Practical Training (OPT) program.

For international students, F–1 status allows a student to remain in the United States as long as he or she is a properly registered full-time student. *See* INA section 101(a)(15)(F)(i), 8 U.S.C. 1101(a)(15)(F)(i); 8 CFR 214.2(f)(5). Under F–1 status and subject to certain conditions and restrictions, a student may work part-time in an on-campus job and in a "practical training" job directly related to the student's field of study for 12 months during or after the completion of studies. *Id.* The OPT program provides F–1 students with an opportunity to apply knowledge gained in the classroom to a practical work experience off campus. The maximum period of OPT is 29 months for an F–1 student who has completed all course requirements for a degree in a science, technology, engineering, or mathematics field and has accepted employment with an employer enrolled in the DHS E-Verify employment verification program and 12 months for all other F–1 students who have completed all course requirements for a degree. *See* 8 CFR 214.2(f)(10)(ii).

The United States places a very high value on attracting international students and scholars to this country. The contributions to the academic experience for all students provided by the existence of a diverse international student body are invaluable. The resources devoted to delivering immigration benefits to deserving students show the importance of this goal to USCIS. Nonetheless, substantial resources are expended by USCIS for adjudication of the student's eligibility for employment documents and the fee for an EAD was established based on those needs. While USCIS acknowledges that the income provided by OPT is helpful to the students, the emphasis of OPT is on training students in their fields of study, not as a source of income. Moreover, EAD applicants may request an individual fee waiver based on inability to pay. Fee waivers should be rare for students because the cost of applying for such a work authorization is a small fraction of the total costs of a student living in the United States, including tuition, room, and board, and international travel to and from his or her country of origin.

USCIS will continue to charge the full fee based on the effort and resources expended to process this benefit for EAD applications not granted a fee waiver. No changes to the regulation have been made as a result of these comments.

b. Entertainers, Athletes, and Other Individuals With Extraordinary Talent.

Numerous commenters objected to the fee increase for nonimmigrant petitions for admission of entertainers, athletes, and other individuals with extraordinary talent to work in the United States on a temporary basis (O and P visas). Some commenters cited issues with booking performances utilizing these performers and noted the inability of USCIS to process the visa requests within the 14 days allotted by statute for petitions not needing additional supporting documentation. *See* INA section 214(c)(6)(D), 8 U.S.C.

1184(c)(6)(D). Commenters opined that they faced the burden of utilizing premium processing to ensure artist availability. Many commenters strongly opposed the increase of the fee and the premium processing fee if improvements in the quality of the visa process were not made, to include meeting the 14-day processing time requirement. Some commenters requested that USCIS treat non-profit performing arts organizations differently than for-profits, suggesting lower fees for non-profits in consideration of their resource means relative to those of for-profit entities. USCIS understands the concerns of commenters and has made reaching the 14-day adjudication process time a goal for O and P visa petitions. USCIS is currently meeting that goal at both service centers that process O and P petitions.

Many commenters noted difficulty managing and responding to USCIS requests for evidence (RFEs). A commenter suggested that USCIS develop a pre-certification process for employers filing multiple petitions to prevent them from having to address the same RFE on multiple occasions. USCIS appreciates these recommendations. USCIS is exploring a registration process for employment-based visa petitioners and is developing policies and training to address these concerns, but these matters are outside of the context of this fee rule.

DHS will not, at this time, implement changes to the USCIS fee system that attempt to account for different levels of income or, in this case, organizational resources. Such a change would require additional administrative complexity, higher costs and, consequently, higher fees for some benefits.

c. Adoption.

One commenter requested that USCIS reduce fees related to overseas adoption. USCIS acknowledges the sensitive nature of these petitions. USCIS proposed using its fee setting discretion to adjust certain "low volume" application and petition fees based on such equitable considerations and capped the fee for a Petition to Classify Orphan as an Immediate Relative, Form I–600; the Application for Advance Processing of Orphan Petition, Form I–600A; the Petition to Classify Convention Adoptee as an Immediate Relative, Form I–800; and the Application for Determination of Suitability to Adopt a Child from a Convention Country, Form I–800A. 75 FR 33445, 33461. Under the fee rule methodology, the calculated fee for these forms would have been as much as $1,455—an increase of more than $785 or 100%. This fee level is due to the complexity of orphan petition adjudications, which often require several background checks and home visits, knowledge of adoption laws in multiple jurisdictions and foreign countries, and a thorough review of supporting documentation and evidence. However, USCIS believes that it would be contrary to public interest to impose a $785 fee increase on potential adoptive parents. To reduce this burden on adoptive parents, DHS lowered the fee increase to $50, or a little more than 7%. Any further reductions would shift an inordinate amount of these costs to other immigration benefit request applicants and petitioners. No changes to the rule have been made as a result of this comment.

d. Entrepreneurs.

A few commenters claimed that the fee for the Immigrant Petition by Alien Entrepreneur, Form I–526, is excessively high. A commenter stated that USCIS has not shown why the percentage increase for the Immigrant Petition by Alien Entrepreneur (for EB–5 status) filing fees should be higher than others, especially when compared to the Petition by Entrepreneur to Remove Conditions, Form I–829. Another commenter added that petitions to remove conditions generally should take less time to adjudicate than the original entrepreneur petition, which has a lower proposed fee.

One commenter incorrectly calculated the fee increase for the Form I–526 as 14%. The actual percent increase for the Form I–526, from $1,435 to $1,500, is only 4.5%, well below the weighted average increase of 10%. Contrary to the commenter's statement, the percent increase for the I–526 is not higher than other benefit fee increases. The Immigrant Petition by Alien Entrepreneur and Petition by Entrepreneur to Remove Conditions are two of the more labor intensive petitions that USCIS processes, as evidenced by the high completion rates (i.e., rate of work time) in the proposed rule. 75 FR 33445, 33471. As stated in the proposed rule, the more complex an immigration or naturalization benefit application or petition is to adjudicate, the higher the unit costs assigned to that task by the activity-based cost model. 75 FR 33445, 33459, 33470. Although the completion rates for the entrepreneur petition and the petition to remove conditions are approximately the same, the fees are substantially different because the costs are being spread across a smaller number of petitions, resulting in a higher unit cost for the petition to remove conditions. 75 FR 33445, 33467. USCIS explained this reasoning in the proposed rule and has not modified the rule in response to the comments.

e. Refugee Travel Documents.

One commenter asserted that both the current fee and the proposed fee increase for the refugee travel document conflicts with United States obligations under Article 28 of the 1951 U.N. Convention Relating to the Status of Refugees. The United States is a signatory to the 1967 U.N. Protocol Relating to the Status of Refugees ("the Refugee Protocol"), which, by reference, adopts articles 2 through 34 of the 1951 Convention. *See* United Nations Protocol Relating to the Status of Refugees, Jan. 13, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267. Article 28 of the 1951 Convention provides that state parties are obligated to issue documents for international travel to refugees lawfully staying in their territory and that "the provisions of the Schedule to this Convention shall apply with respect to such documents." The referenced Schedule provides at paragraph 3 that "[t]he fees charged for issue of the document shall not exceed the lowest scale of charges for national passports." *Id.*

After carefully considering this comment, DHS has determined that the fee for the Refugee Travel Document should be lowered to match the fee charged for the issuance of passports. The Department of State passport fee for an adult over the age of 16 is $110 plus a $25 execution fee. For an applicant under the age of 16, the fee is $80 plus a $25 execution fee. Accordingly, this final rule reduces the fee for the filing of a Form I–131 for a Refugee Travel Document to $135 for an adult age 16 or older, and $105 for a child under the age of 16. USCIS will continue to charge the $85 biometrics fee since that fee is intended to cover the costs of a service that is separate from the issuance of the refugee travel document. The fee for other applications for advance parole and travel documents will be $360 as calculated in the model. *See* 8 CFR 103.7(b)(1)(i)(M).

4. Fee Decreases

A number of commenters questioned the rationale of implementing fee decreases. Some commenters suggested that fees that are set to decrease should instead be increased in order to mitigate the impact of other fee increases. A few commenters opined that only immigration benefit requests filed by employers should increase, while those filed by individuals should not, reasoning that employers can better afford fee increases. On the other hand, many commenters argued against increasing fees for petitions filed by employers, stating that increasing the fees for those petitions may increase reluctance by employers to hire non-U.S. citizens. Also, a number of commenters expressed appreciation for the fee decreases.

USCIS believes that it is important that fees be based as much as possible on the relative identifiable costs associated with providing each particular benefit or service to follow the spirit of government-wide fee setting guidelines in OMB Circular A–25, the CFO Act, and FASAB guidance. USCIS uses an activity-based cost model to determine the appropriate fee for each immigration benefit request. This model considers a variety of factors such as budgetary costs, the number of anticipated requests, the time necessary to adjudicate the request, the locations that receipt and complete the request and their associated resources, and the number of fee waivers or exemptions that may be granted for each form type. Over time, these factors may change resulting in a lower calculated fee for certain requests. Additionally, to improve transparency and account for the impact of investments in technology, USCIS will consider incorporating a productivity measure into the next fee rule that will capture the outcomes of these investments on USCIS operations. Greater efficiency in processing, resulting in reduced adjudication times or fewer resource requirements, may also lead to fee reductions.

USCIS must ultimately implement a fee change that is based primarily on cost. In instances where costs are shifted, USCIS must ensure that the logic supporting these shifts is applied in a fair and consistent manner. It would not be fair for USCIS to prevent an immigration benefit request from realizing a legitimate fee decrease in order to reduce costs to other applicants and petitioners. Shifting an inordinate amount of costs to petitions filed by employers would also be unfair. USCIS will continue to realize fee decreases as they occur.

C. Fee Waivers and Exemptions

Statutes and policy exempt certain classes of applicants and petitioners from paying fees, and waive some fees for individuals who demonstrate an inability to pay. USCIS received many comments concerning the fee exemption and waiver process. Most commenters thought that expansion of the immigration benefit requests available for fee waivers would promote legal immigration. Some commenters noted that the fee waiver process lacked standardization and that individuals faced challenges when applying for fee waivers. Other commenters suggested that USCIS offer fee waivers for immigration benefit requests that are not currently waivable, or exempt additional classes of applicants and petitioners from certain fees. Others suggested that fees be raised to shift costs to particular kinds of applicants to reduce increases or reduce current fees for certain other applicants.

Under the new fee structure, USCIS anticipated waiving fees for a certain percentage of applicants. USCIS also provides for a number of exemptions, where fees are not charged because a large percentage of applicants would clearly be unable to pay. These exemptions include a range of humanitarian and protective services, such as refugee and asylum processing, and other related services. USCIS also anticipates that it may allow a type of case to request a per case waiver of the fees based on economic necessity, such as in the case of an earthquake, hurricane, or other natural disaster affecting a localized population of people who may file requests, although all others who file the same kind of application must pay the fee.

To the extent not supported by appropriations, the cost of providing free or reduced services must be transferred to all other fee-paying applicants. That is one reason why USCIS is relatively conservative with respect to intentionally transferring costs from one applicant to others through fee waivers. However, various comments to the proposed fee rule suggested expanding the range of applications and petitions for which we would consider a fee waiver.

1. Asylee Benefits and Status Adjustment

USCIS received some comments requesting exemption from adjustment of status fees based on having previously been granted asylum, citing the general inability to pay of this population. USCIS currently allows asylees to apply for a fee waiver when applying for adjustment of status. 8 CFR 103.7(c)(5)(ii). *See also* new 8 CFR 103.7(c)(4)(iii). Asylees are not required to pay filing fees for employment authorization documents, providing them with a means to become gainfully employed and earn wages to cover the cost of adjustment. 8 CFR 103.7(c). Granting an exemption to adjustment of status fees for this class of immigrant will increase the fees paid by other applicants. USCIS will continue to offer fee waivers to eligible asylee adjustment of status applicants. USCIS will undertake a comprehensive review of policies related to refugees and asylees; however, DHS is providing no fee exemption in the final rule.

2. Expansion of Fee Waivers and Exemptions

A number of commenters requested that more immigration benefit requests be available for fee waivers or be exempt from filing a fee. Commenters suggested that a fee waiver be generally available for travel documents, employment authorization documents, and the immigrant visa, among other suggested forms.

a. Travel and Employment Authorization Documents and Immigrant Visas

The Immigration and Nationality Act, as amended, prohibits DHS, the Department of State (DOS), and immigration judges from admitting or granting adjustment of status to permanent resident to any alien who is likely to become a public charge at any time. *See* INA section 212(a)(4), 8 U.S.C. 1182(a)(4). In addition, applicants and petitioners are required to complete affidavits of support declaring that the recipients of certain benefits will be self-supported (or supported by the petitioner) and will not require public funding for support. This need to prove a certain level of financial wherewithal in order to qualify for a certain benefit would be incongruous with the ability to extend fee waiver authority to those benefit requests. A fee waiver could conflict with the requirement that an applicant or beneficiary be eligible for the service requested.

DHS has expanded fee waivers and exemptions to additional immigration benefit requests and classes of applicant over the last few years. *See, for example,* Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 FR 75540 (Dec. 12, 2008) (allowing a fee waiver for Form I–485 and requests for waivers of inadmissibility). In this final rule, DHS has authorized the USCIS Director to approve and revoke exemptions from fees, or provide that the fee may be waived for a case or class of cases that is not otherwise provided in 8 CFR 103.7(c). New 8 CFR 103.7(d). USCIS believes that these adjustments will ensure that fee waivers are applied in a fair and consistent manner, that aliens who are admitted into the United States will not become public charges, and that USCIS will not shift an unreasonable amount of costs to other fee-paying applicants to recover funding lost due to fee waivers.

DHS has decided not to authorize fee waivers where such a waiver is inconsistent with the benefit requested. For example, several commenters suggested that USCIS should consider allowing fee waivers for reentry permits, refugee travel documents, and advance parole when an alien wants to travel abroad. In essence, this argument suggests that although the applicant is prepared to incur the cost of traveling internationally, USCIS should consider waiving the application fee and instead transfer that cost to others. Expanding fee waivers into such areas moves away from clear economic necessity to merely choosing to provide one applicant with an advantage over another.

A number of commenters suggested, however, that USCIS allow fee waiver requests for Application for Travel Document, Form I–131, in cases of humanitarian parole. DHS's experience with the 2010 Haitian earthquake relief efforts has shown that many recipients of humanitarian parole are worthy of consideration of a fee waiver. DHS agrees that some applicants could be of limited means and the fee may be particularly burdensome to this population. Thus, as suggested by the commenters, DHS has decided to revise the final rule to add requests for humanitarian parole to the list of forms that are eligible for a fee waiver upon a showing of the inability to pay. *See* 8 CFR 103.7(c)(3)(iv). In addition, DHS encourages those who believe that they have a sufficiently sympathetic case or group of cases in any type of benefit request to submit a request to their USCIS local office for a waiver under 8 CFR 103.7(d).

b. Waiver Eligibility for Notices of Appeal or Motions

DHS is adding a provision to the fee for the Notice of Appeal or Motion, Form I–290B, to provide that the fee to file an appeal or motion to reopen following a denial of an immigration benefit request that is exempt from a fee or the fee was waived may be waived by USCIS upon a showing by the applicant or petitioner of inability to pay. *See* New 8 CFR 103.7(b)(1)(i)(M)(v)(c)(ii)(3)(vi). DHS has made several immigration benefit requests exempt from fees due to humanitarian or other considerations. As a result of comments expressing concern about the cost of appeals, DHS has decided that it is appropriate to allow the applicant or petitioner who received a fee exemption or was granted a fee waiver for the underlying application or petition to request that the fee to appeal a denial of such form be waived. DHS decided that it was not appropriate to exempt all appeal and motion fees for denials of fee exempt requests because fee exemptions are provided based on a number of considerations, and a fee waiver is a decision based on financial status. DHS believes it is appropriate to provide that the fees may be waived in the case of financial hardship.

c. Military Naturalizations

Similarly, DHS is also adding a provision to exempt members or veterans of the U.S. Armed Forces from paying the fee for Request for Hearing on a Decision in Naturalization Proceedings, Form N–336. *See* New 8 CFR 103.7(b)(1)(WW). These individuals are currently exempt from paying the Application for Naturalization, Form N–400, fee. As a result, those members or veterans of the U.S. Armed Forces whose N–400s have been denied will often file another Application for Naturalization for free rather than file an appeal using the proper form (Form N–336) to avoid the fee associated with that appeal. DHS is making this change to correct this anomaly and to conform to the intent of the National Defense Authorization Act of 2004, which provides for free naturalization for military members. *See* INA section 328(b), 8 U.S.C. 1439(b)(4). DHS is also providing that members of the military are exempt from paying the fee for an Application for Certificate of Citizenship, Form N–600, to conform to the same intent. *See* New 8 CFR 103.7(b)(1)(i)(AAA).

d. Arrival-Departure Records

Several commenters suggested allowing a fee waiver for an Application for Replacement/Initial Nonimmigrant Arrival-Departure Document, Form I–102, when filed by a refugee, asylee, a victim of trafficking, and others whose immigration status is based on humanitarian grounds. USCIS does provide initial documentation to such individuals without additional charge. Fees are currently charged only to replace a document or to change a document where the individual changes his or her name. 8 CFR 103.7(b)(1)(H). USCIS does not believe that expanding fee waivers to such replacements is an appropriate cost transference to other applicants. Hardship cases may submit a request to their local office for a fee waiver under 8 CFR 103.7(d). No changes have been made to the rule as a result of these comments.

3. Standardization of the Fee Waiver Process

Some commenters cited difficulty in navigating the fee waiver process. USCIS agrees that the fee waiver process would benefit from standardization. DHS has revised 8 CFR 103.7(c) to be easier to read, understand, and follow in order to bring clarity and consistency to the fee waiver process. In addition, USCIS has proposed a new form to facilitate the fee waiver process—Request for an Individual Fee Waiver, Form I–912. *See* Agency Information Collection Activities: Form I–912; New Information Collection; Comment Request, 75 FR 40846 (July 14, 2010). USCIS consulted with, and received valuable input from, stakeholders and community-based organizations in developing Form I–912. Form I–912 was available for public comment at *www.regulations.gov* until September 13, 2010. The new form will clearly outline the requirements and documentation necessary to support a request for a fee waiver. This form can be used to submit fee waiver requests for eligible applications, petitions, and biometric services. USCIS intends to make it easier to request a fee waiver by regulating this process and expects to finalize Form I–912 promptly.

4. Commonwealth of the Northern Mariana Islands (CNMI) Transitional Worker

One commenter requested a reduction in fees or a fee waiver for the adjustment of status of family members within the two-year transition period of the implementation of the Consolidated Natural Resources Act of 2008, Public Law 110–229, 122 Stat. 754 (2008).

Fee waivers are not generally available for employment-based immigration benefit requests. Due to the unique circumstances present in the CNMI, however, DHS published an interim rule that provided for a separate Form I–129 called the I–129CW, Petition for a Nonimmigrant Worker in the CNMI, and provided in that rule that USCIS adjudicators may waive the fee for Form I–129CW in certain circumstances if the petitioner is able to show inability to pay. *See* 8 CFR 103.7(c)(5)(i), Commonwealth of the Northern Mariana Islands Transitional Worker Classification, and 74 FR 55094 (Oct. 27, 2009). DHS has also included that waiver authority in this rule. *See* 8 CFR 103.7(b)(1)(i)(J); 8 CFR 103.7(c)(3)(iii). That authority will not take effect, however, until DHS has considered comments on the interim rule and published a final rule. Thus, the comment on fee treatment specific to the CNMI has been entered into the docket of that rule, and will be considered in drafting that final rule as well as other rules that will implement the CNRA. Nevertheless, due to the inherent inconsistency between sponsoring an alien for employment and being unable to pay the requisite fee for that sponsorship, USCIS expects that the situations when an employer would adequately demonstrate an inability to pay will be extremely limited.

D. Naturalization

USCIS received some comments suggesting that the naturalization fee be raised to an arbitrarily higher amount to reflect the value of U.S. citizenship.

Some commenters praised USCIS for not increasing the fee for naturalization, while other commenters requested that the fee be lowered even more, citing the fee as a deterrent to naturalization. USCIS recognizes the importance of immigrant integration and seeks to promote citizenship. At the same time, USCIS must balance costs and ensure that applicants and petitioners are not burdened with excessive surcharges and subsidies. Additional reductions to the naturalization fee would result in increases to other immigration benefit fees; therefore USCIS will keep the fee at its current level of $595. Accordingly, DHS has determined that the fee for Form N–400, Application for Naturalization, will remain at its current level of $595, even though this fee should have increased under the fee rule methodology.

A few commenters questioned the increase to Forms N–600/600K, Applications for Certificates of Citizenship. The commenters contended that in the case of children, USCIS will have already performed the bulk of the adjudicative work for these applications when USCIS processes the parent's Application for Naturalization. Commenters stated that the N–600 requires very little adjudicative time to process. While some applications may be simple, the type of research required for each applicant may be complex and the level of research required will vary based on the individual circumstances. USCIS is required to establish whether the Application for Naturalization was appropriately granted and the time required to research and verify the validity of that application requires significant resources. In addition, this application is not limited to those eligible due to a parent's naturalization, and cases involving derivative acquisition of citizenship can sometimes be very complex. If USCIS were to freeze this fee just as it did the N–400 fee, this change would force other fee-paying applicants and petitioners to subsidize the cost of processing Applications for a Certificate of Citizenship. We do not believe that such a result is justified here.

DHS has decided to make one change to the fee for Forms N–336 and N–600. DHS is modifying the fee for a Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA), and an Application for Certification of Citizenship, Form N–600, to provide that there is no fee for such requests from a member or veteran of the military. *See* New 8 CFR 103.7(b)(1)(i)(W) and (AAA). USCIS is precluded by law from collecting a fee from members of the military for an Application for Naturalization under sections 328 and 329 of the INA. DHS has determined that it is in keeping with the Congressional intent in passage of sections 328 and 329 to show a preference to members and veterans of the military in similar proceedings, thus it is appropriate that these requests for a certificate if citizenship also be permitted without fee.

E. Improve Service and Reduce Inefficiencies

1. Service Improvement and Fees

Many commenters noted lengthy waiting times to process immigration benefit requests and highlighted the need to improve overall customer service. These comments suggested that, regardless of whether the proposed fees were justified, applicants and petitioners should not be asked to pay the full fee increase until USCIS improves service. Others suggested that, even if fees were increased before service level improvements were made, there should be detailed commitments to service level improvements to ensure that increased revenues are used to improve service.

Some comments stated that USCIS has increased fees before with the promise of improved services, but never fully delivered on that promise. As outlined in the proposed rule and supporting documentation, USCIS delivered nearly all of the promised processing time performance and deployed most of the projects funded through resource enhancements in the 2008/2009 fee rule. 75 FR 33445, 33451–33453. USCIS is firmly committed to continue to improve operations and service, particularly as business transformation is deployed over the next five years.

Some commenters asserted that USCIS had not improved service since implementation of the previous fee rule, which went into effect on July 30, 2007. DHS disagrees. USCIS continues to work on service improvements. USCIS made substantial progress towards achieving processing goals over the FY 2008/2009 biennial period. For example:

- USCIS processed nearly 1.2 million naturalization requests in FY 2008, 56 percent more than 2007. As of June 2010, there were approximately 299,000 naturalizations cases pending—one of the lowest levels in the recent history of USCIS. A surge response plan implemented in FY 2008 enabled USCIS to meet nearly all FY 2008/2009 fee rule processing time reduction goals by the end of FY 2009.
- USCIS and the Federal Bureau of Investigation (FBI) effectively eliminated the National Name Check Program (NNCP) backlog. NNCP now is now able to complete 98 percent of name check requests submitted by USCIS within 30 days, and the remaining 2 percent within 90 days.
- USCIS has implemented electronic adjudication of some cases to help staff focus attention on more complex cases where discrepancies have been found.
- USCIS is transitioning to a new U.S. Department of the Treasury lockbox provider and away from dispersed collection points to improve intake operations and the control and timing of fee deposits.

Process improvements implemented over the past several years, as well as projected productivity increases, are taken into account in the current fee review, keeping fees lower than they might otherwise have been. Future productivity enhancements are expected to produce lower costs per unit that will be reflected in fee adjustments.

Other commenters recommended that USCIS conduct studies to analyze processing times at different locations and shift work to locations that have demonstrated efficiency in completing the work. USCIS agrees that it is important to distribute work to account for workload and productivity levels. USCIS continually monitors performance at its locations and analyzes resources to ensure that its Field Offices and Service Centers have the capacity to process immigration benefit requests in a timely manner. USCIS has implemented "bi-specialization" of forms at its Service Centers, which aligns the processing of most forms at one of two pairs of Service Centers, such that any individual form subject to bi-specialization is adjudicated at only two of the four regional Service Centers. This change increases processing uniformity and allows the Service

Centers to improve proficiency in adjudications. USCIS is also shifting certain tasks, such as intake, to centralized locations in order to take advantage of economies of scale and develop expertise in processing methods.

Some commenters requested that USCIS increase its ability to receive different forms of payment. USCIS agrees with these comments and has deployed credit card processing machines to all of its Field Offices. Credit card payment is available for immigration benefit requests submitted in-person. Some have suggested that USCIS expand credit card payments to immigration benefit requests that are mailed to USCIS, but USCIS believes that option could provide a path for fraud and abuse. USCIS continues to explore ways to modernize and streamline fee collection processes.

A number of commenters protested the increase in the Application to Replace Permanent Resident Card, Form I–90. Some commenters offered anecdotal evidence outlining multiple instances when a permanent resident card was not delivered to the recipient. Commenters opined that it was easier to pay the I–90 fee again, even though their cards were not delivered, than to protest the lack of delivery of the cards. In FY 2008, USCIS developed a secure mail delivery process referred to as the Secure Mail Initiative (SMI) whereby re-entry permits and refugee travel documents are delivered via the U.S. Postal Service Priority (USPS) Mail. This change allows documents to be delivered by USPS in two to three days with delivery confirmation. This year, the SMI process was expanded to USCIS locations that receive and re-mail undeliverable permanent resident cards and employment authorization documents. Permanent resident cards not initially received by recipients are processed using the SMI. However, USCIS agrees that permanent resident card delivery deserves special consideration. USCIS intends to deliver all permanent resident cards (initial deliveries and re-deliveries) through SMI once revenue is deemed sufficient to fully support the initiative.

Ultimately, USCIS fees are based on the processing costs for immigration benefit requests. Any structural deficit between costs and fees could create and accelerate the growth of backlogs and deteriorate service levels. The proposed fee adjustments and this final rule reflect this concern. Thus, while USCIS addresses the spirit of the comments by continually searching for ways to improve its service, no specific changes are being made to the final rule to address these comments.

2. Multiple Biometric Data Requests

A few commenters pointed to the fact that applicants or petitioners must provide biometric data more than once if they file several applications or petitions and their biometrics submitted for previous requests has expired. Some commenters considered the expiration of fingerprint submissions to be inefficient. Others suggested that it was inefficient for USCIS to again request biometrics when they apply for sequential benefit applications.

Biometrics (which include fingerprints and photographs) submitted to USCIS are valid for 15 months. This validity period, in most cases, provides sufficient time for an immigration benefit request to be processed. USCIS utilizes the Biometrics Storage System and the Benefits Biometric Storage System to store biometric data and 10-print fingerprints, respectively. These systems allow USCIS to reuse and resubmit biometrics as long as an immigration benefit request has been adjudicated within the 15 month validity period. If there are processing delays at USCIS, USCIS does not charge the applicant the biometrics fee again if the 15 month validity period expires. When an applicant later reapplies to renew a benefit or for another benefit, the biometrics appointment is not simply an opportunity to re-take the biometrics again; it is an opportunity to use biometrics to verify his or her identity.

The biometrics fee covers costs associated with the use of the collected biometrics to pay the cost of FBI and other background checks. Thus, an applicant will pay the biometrics fee whenever he or she files another immigration benefit request that requires the collection, updating, or use of biometrics for background checks.

As USCIS transforms its systems to a more fully electronic application process, biometrics will be stored and generally reused for the purpose of the same and/or multiple benefit purposes. Consequently, current operational practices in this area for most benefit types are based primarily on pre-transformation business structures and information systems. Future fee rules will take into account the transformation program, and therefore no adjustments are made to this final rule based on these comments. Biometric fees will continue to balance the initial capture, reuse, identity verification, and anti-fraud functions performed whenever an applicant or petitioner, or other individual, is required to submit fingerprints.

3. Transformation

A number of commenters noted that USCIS should not increase fees until business process reengineering takes place. Commenters stated that USCIS should move from a primarily paper-based processing environment to a web-based one. Many commenters called for simplified processes and more electronic processing. Commenters also questioned the management and viability of USCIS' current transformation program.

USCIS agrees that transitioning to electronic adjudication is an important priority. USCIS is committed to improving the efficiency and effectiveness of its immigration processing system and will dedicate the funds and management attention necessary to complete this task. Electronic filing is currently available for seven of the most common benefit requests, as well as premium processing service requests. USCIS expects to deploy the initial increment of its transformation program by the end of FY 2011. As one of the Administration's High Priority Performance Goals, USCIS has committed to ensuring that at least 25% of applications will be electronically filed and adjudicated using the new transformed integrated operating environment by FY 2012.

Transforming the paper-based USCIS adjudication process is crucial to fundamentally improving USCIS response to evolving applicant and petitioner needs and modern immigration demands. USCIS transformation is an employee-driven effort to redefine business processes and systems and create a more modern, secure, and customer-focused organization. For benefit seekers, this means 24–7 online account access and real-time updates. For employees and interagency partners, it means more efficient case management and improved information sharing. For the American public, it means greater national security due to enhanced risk and fraud detection capabilities.

Ultimately, transformation will fundamentally alter the way USCIS does business and will advance it from a paper-based organization to a more efficient government component, capable of meeting 21st century immigration demands. However, USCIS transformation will not happen overnight. Changes will be implemented over the next five years, and stakeholder input is at the forefront of this process. Feedback from employees, inter-governmental partners, and the immigration community is critical to the success of the transformation program.

The transformation solution will be implemented in two phases that follow the natural progression of the immigration lifecycle, beginning with nonimmigrant benefits. The first phase, which is scheduled to deploy beginning in the fourth quarter of FY 2011, will shift USCIS from application-based services to applicant- and petitioner-based electronic services for nonimmigrant benefits. The second phase, which is scheduled to deploy from calendar years 2012 to 2014, will apply the new capabilities progressively to the remaining USCIS benefits in three distinct releases, starting with immigrant benefits, followed by humanitarian benefits, and ending with citizenship. As lines of business are transformed, instead of using paper forms and manually transmitting information, applicants and petitioners will primarily apply for benefits using online accounts—similar to the way most banks use electronic accounts today. Data will be transmitted electronically and USCIS employees will view the data in a streamlined automated environment. Cases will automatically be assessed for risk and assigned to appropriate adjudicators. Office caseloads will be managed according to volume, allowing supervisors and managers the ability to make informed decisions and balance workloads across USCIS. Adjudicators will have access to complete case records in user-friendly, electronic formats, allowing them to make timely, accurate, "one-touch adjudication" decisions.

4. Increases Relative to Time

Some commenters suggested that some fees were excessive for certain benefit requests relative to the time it takes to process the requests. Commenters also recommended that USCIS consider reducing fees for variations of a form that may take less time to process. For example, one commenter suggested that it may take less time to process an Immigrant Petition for Alien Worker, Form I–140, when it is accompanied by a labor certification than at other times. DHS agrees with the concerns of the commenter in principle, but the current modeling and data do not support the detailed analysis that is necessary to drive these distinctions into the activity-based costs. In the future, USCIS intends to use its transformed systems to perform a more in-depth analysis of immigration benefit requests, eventually examining the fee structure and processing costs of each of the various benefit requests that are filed regardless of the form used, such as the multiple employee types petitioned for on Forms I–140 and I–129, Petitions for Immigrant and Nonimmigrant Workers. USCIS does not possess the data gathering and reporting capacity to support such analysis and this type of fee system at this time.

USCIS also understands the commenters' desire to have their requests processed as quickly as possible and that some USCIS-administered benefits are subject to more processing delays than others. In general, delays do not factor into the calculation of fees, except as they relate to the complexity of the adjudication. The primary basis of the USCIS fee model is administrative complexity, which is the amount of work necessary to process a particular kind of application or petition (identified as "Make Determination" activity in the proposed rule). The calculation also factors in other direct costs, such as the cost of producing and delivering a document when that is part of the processing of a particular benefit. In addition to these costs, the fee calculation model factors in the full costs of USCIS operations, including services provided to other applicants and petitioners at no charge, overhead costs (*e.g.,* office rent, equipment, and supplies) associated with the adjudication of the immigration benefit request, and other processing costs. These latter costs include responding to inquiries from the public ("Inform the Public" activity); immigration benefit request data capture and fee receipting ("Intake" activity); conducting background checks ("Conduct Interagency Border Inspection System Checks" activity); the acquisition and creation of files ("Review Records" activity); preventing and detecting fraud ("Fraud Prevention and Detection" activity); when applicable, producing and distributing secure cards ("Issue Document" activity); and electronically capturing biometrics (fingerprint and photograph), background checks performed by the FBI, or use of the collected biometrics to verify the identities of applicants ("Capture Biometrics" activity). Thus, no changes are made in the final rule as a result of these comments.

5. Fee Refunds

Some commenters were opposed to the fee increase for the Notice of Appeal or Motion, Form I–290B. Commenters thought that the fee, though waivable, could hinder individuals and prevent them from receiving benefits they deserve. They noted that the time involved in submitting a fee waiver request jeopardized their chance of meeting the 30-day filing deadline for an appeal. Commenters also expressed disappointment in the appeals process in general, noting that it was particularly burdensome for those who are attempting to, as they perceive it, rectify an error made by USCIS. Commenters suggested that USCIS develop a system to refund fees paid because of USCIS error. Multiple commenters cited being required to pay for Form I–290B or the Application for Action on an Approved Application or Petition, Form I–824, due to USCIS error.

USCIS has in the past agreed with the findings of the USCIS Ombudsman, who recommended developing more consistent and clear procedures for processing motions to reopen and reconsider. *See http://www.uscis.gov/USCIS/Office%20of%20Communications/Homepage/Ombudsman%20Liaison%20Unit/OLU%20Responses%20to%20Formal%20Recommendations/rec42_18aug09.pdf.* USCIS is also developing a fee refund process. The intent of that process is to provide a simple, expeditious system to point out clear administrative errors made by USCIS and to receive a rapid remedy from USCIS mistakes. USCIS has undertaken an internal review of the fee refund process, its associated internal procedural policy memo, and a new fee refund form. The results of this review are planned for inclusion in USCIS' next fee study.

Some commenters also mentioned the perceived risk in filing Forms I–290B, noting that they may not be routed properly. In addition to the aforementioned process changes, USCIS now accepts Form I–290B at its lockbox facilities for applicants and petitioners filing an appeal or motion concerning a decision made in a USCIS field office. Filing at a lockbox facility provides individuals with a receipt and facilitates enhanced case tracking for USCIS applicants and petitioners. Lockbox use also ensures that the I–290B intake process is timely. DHS believes this centralized filing and handling will alleviate the timing issues that the commenters raised and that these actions and changes are responsive to the comments, though no changes to the final rule were made as a result of them.

DHS is adding one additional change to the fee for the Notice of Appeal or Motion. Based on an analysis of the public policy objectives and related legislation, DHS is providing that there is no fee for an Iraqi or Afghan national who worked for or on behalf of the U.S.

Government in Iraq or Afghanistan to appeal a denial of a petition for a special immigrant visa. The National Defense Authorization Act of 2008 provided that neither DOS nor DHS may collect any fee in connection with an application for, or issuance of, a special immigrant visa for an Iraqi or Afghan national who worked for or on behalf of the U.S. Government in Iraq or Afghanistan. Section 1244 of the National Defense Authorization Act, 2008, Public Law 110–181, 122 Stat. 3, as amended by Public Law 110–242, 122 Stat. 1567 (Jan. 28, 2008). DHS believes it is keeping with the language of that statute to also provide an appeal of such an application for no charge. Thus, DHS has changed the final rule to provide that when such a petition is denied, the petitioner may appeal by filing a Notice of Appeal or Motion without fee.

6. Customer Service and the Office of Public Engagement

Some commenters requested more access to USCIS to encourage a constructive and efficient dialogue between the parties with the hopes of significantly reducing overall processing times, helping identify policy and process defects, resolving questions, and providing corrections and clarifications on various immigration benefit requests. Many commenters detailed customer service issues, and incidences of poor customer service, with various USCIS offices. A number of commenters believed that USCIS should not increase fees until customer service improves.

USCIS is dedicated to ensuring that stakeholders are fully informed of its programs and processes, and can provide input regarding USCIS priorities, policies and programs, and assessing organizational performance. USCIS seeks to build new partnerships and enhance existing relationships with a broad range of stakeholders, including community-based and faith-based organizations, state and local government representatives, advocacy groups, and other stakeholders interested in USCIS policies and operations. Such partnerships enable USCIS to maintain a transparent and collaborative approach to policy making and operations through information sharing, stakeholder feedback, and engagement opportunities. USCIS hosts frequent engagements on a broad range of issues, welcomes input on topics of concern from the stakeholder community, and seeks to provide opportunities for stakeholders to submit feedback to USCIS. The recently established USCIS Office of Public Engagement (OPE) facilitates and coordinates outreach and engagement and directs USCIS-wide dialogue with external stakeholders.

USCIS is currently implementing a policy review to comprehensively examine policy, guidance, and procedures. Collectively, we believe that these actions are responsive to these comments. We have not revised this final rule in response to the comments.

F. Premium Processing

Premium processing is a program by which a petitioner for a nonimmigrant worker may pay an extra amount to ensure that the petition will be processed in 15 days. The premium processing fee was statutorily authorized in 2000 for employment-based applications and petitions and was set at $1,000. *See* INA section 286(u), 8 U.S.C. 1356(u); 8 CFR 103.2(f); new 8 CFR 103.7(b)(1)(i)(QQ), and (e). Premium processing is currently authorized for certain classifications filing a Petition for a Nonimmigrant Worker, Form I–129, or an Immigrant Petition for Alien Worker, Form I–140. *See* new 8 CFR 103.7(b)(1)(i)(RR), and (e); USCIS Web site at *www.uscis.gov.* For example, petitioners would pay the $580 fee for a Form I–140 under this rule, plus $1,225 for premium processing.

Some commenters suggested that premium processing be expanded to other immigration benefit requests, while other commenters argued against an increase to the premium processing fee. Some commenters stated that premium processing is essentially mandatory, rather than optional, to ensure the timely and efficient processing of their employment-based petitions.

1. Expansion of Premium Processing Service

The comments suggesting the expansion of premium processing are similar to other comments that believe fee increases generally will result in better service. USCIS understands the desire of the commenters to be able to obtain faster processing of all immigration benefit requests. Such comments indicate that at least some are willing to pay substantially more if USCIS can guarantee faster service.

USCIS has considered expanding premium processing to other immigration benefit requests beyond those currently allowed in conjunction with this fee rule. In future reviews, USCIS will perform the necessary analysis to identify candidates for faster processing guarantees, while also considering operational limitations that may prohibit expansion of premium processing into certain areas. USCIS will also need to determine the appropriate amount to charge for each benefit if permitted, and the logistical requirements for implementing expanded premium services. USCIS has not, to date, analyzed the effect of premium processing on specific application and petition types, but plans to consider doing so in the future. Premium processing actually moves applicants and petitioners to the head of the line for adjudication and the additional fee permits the devotion of specific resources to resolving that application or petition. No change is made in this rule as a result of these comments. Nevertheless, USCIS believes that this issue does justify more analysis for consideration in future fee reviews.

2. Adjustment to Premium Processing Fee

Some commenters disagreed with an increase to the premium processing fee. Many cited delays in the process that required them to file a request for premium processing to ensure receipt of a visa in a reasonable amount of time. Other commenters mentioned what they perceived to be frivolous RFEs that contribute to delays in processing these visas. For many commenters, premium processing increased the likelihood of their success in managing the RFE process and the visa process in general. The commenters stated that an increase to the premium processing fee, when multiplied by the number of aliens for whom they may petition, would be particularly burdensome.

USCIS is striving to increase its efficiency in all visa processing and, at this time, O and P visa processing. Efficiencies in these areas will alleviate the need for premium processing services and ensure that applicants and petitioners can expect to procure these visas in a timely manner. USCIS recognizes the concerns of the commenters and has made the 14-day adjudication processing time a goal for O and P visa petitions. USCIS is meeting that goal at both Service Centers that process these petitions.

In addition to improving processing times, USCIS has also undertaken several initiatives to improve the quality of O and P visa adjudication. An RFE project is being developed at the Service Centers to revise current RFE standard operating procedures to facilitate consistent, relevant, concise and clear RFE templates. The O and P visa classifications are a part of the first phase of this project. USCIS is also reviewing the Adjudicator's Field Manual, existing policy guidance, and training materials to identify focal points for additional guidance and training for O and P visa processing. Through these efforts, USCIS hopes to reduce the number of premium processing service requests related to these visa categories.

The percent change in the Consumer Price Index for All Urban Consumers (CPI–U) was used to adjust the premium processing fee. Between June 2001, when Congress established the fee, and June 2010, the CPI–U increased by 22.45%. When that percentage increase is applied to the current premium processing fee of $1,000, the adjusted premium processing fee is $1,224 ($1,225 when rounded to the nearest $5). *See* INA section 286(u), 8 U.S.C. 1356(u). This amount is the same fee in the proposed rule and represents the final premium processing fee. Adjusting this fee by the Consumer Price Index is statutorily permissible and is a reasonable method for accounting for increases in costs for this service. Since Congress enacted this original fee level (almost ten years ago), labor and resource costs have increased significantly. The revenues that USCIS derives from premium processing exceed the marginal costs for providing such services. Fees from this activity contribute to significant system and business process modernization which will benefit all applicants and petitioners. Therefore, DHS has increased the fee in this rule as proposed.

G. New Fees and Forms

1. Immigrant Visa DHS Domestic Processing Fee

Several commenters questioned the appropriateness and the amount of work required to justify the proposed immigrant visa processing fee. Another commenter suggested that fee waivers should be available for immigrant visas, an issue which is addressed elsewhere in this preamble. One commenter questioned how USCIS plans to implement this new fee, including when and where the fee would be payable, such as when the immigrant visa petition is filed with USCIS, with the immigrant visa fee payable to DOS, at the time of immigrant visa issuance, at the port of entry (POE) prior to admission, or by mail after admission is completed. Due to staffing and logistical issues and convenience for the applicant, USCIS has requested that DOS collect the fee on USCIS's behalf. Under the Economy Act, 31 U.S.C. 1535, USCIS will reimburse DOS for the costs DOS incurs in performing this service on behalf of USCIS. Still another commenter asked how the new fee impacts immigrant visa demand.

USCIS has not conducted an analysis to determine the potential impact on visa demand, but DHS has determined that, irrespective of any potential effect, USCIS should no longer shift its costs of providing immigrant visas to those paying fees for other immigration benefits. Based on current projections, USCIS expects this fee to generate $74.2 million during the next fiscal year, a sum that otherwise would be charged as overhead to all other fee-paying applicants and petitioners.

While the new fee for processing an immigrant visa admission packet is mostly for an internal recordkeeping function based on the transfer of documents from one government entity to another, the relatively limited nature of this activity does not exempt it from cost recovery through a unique fee. Costs include the initial creation of the alien's "A-File" and production and shipment of the permanent resident card. These costs are currently borne by USCIS, as the DHS agency administratively responsible for the assigned task, and charged to all fee paying applicants and petitioners as an overhead expense. Accordingly, DHS has decided that these are costs that are better charged directly and recovered from immigrants as an appropriate immigrant visa processing fee.

A commenter suggested that the imposition of a fee for the processing of the immigrant visa packet incorrectly amounted to funds being paid to USCIS for the consular officer's visa approval decision and/or the U.S. Customs and Border Protection (CBP) officer's lawful permanent residence admission decision to become effective. DHS disagrees. The immigrant visa domestic processing fee recovers the costs of USCIS staff time to process, file, and maintain the immigrant visa package and the cost of producing the permanent resident card. Although the labor or effort may seem inconsequential, USCIS processes approximately 36,000 of these requests per month, totaling almost 430,000 visa applications, or $70,950,000, annually. The volume of this activity warrants a significant amount of dedicated USCIS resources. The costs for these resources are currently charged to all fee payers. DHS believes that this is an undue burden for other fee-paying applicants and petitioners and is, therefore, shifting the cost of processing immigrant visas to the immigrant visa recipients who are the beneficiaries of this service. Some commenters lauded the implementation of the additional fees, recognizing that these fees remove some of the cost burden from fee-paying applicants. This new fee does not alter the costs of, or reimburse for, any activity by CBP. No changes to the final rule were made as a result of these comments.

2. Civil Surgeon Designation Fee and Form

Some commenters requested that military civil surgeons be exempt from the new Civil Surgeon Designation Fee. DHS agrees. DHS is exempting physicians serving in the military or employed by the U.S. government from the fee required of civil surgeons if performing examinations for members or veterans of the military, or their dependents, who receive care at a U.S. military, Department of Veterans Affairs, or U.S. government facility in the United States. *See* New 8 CFR 103.7(b)(1)(i)(SS).

Another commenter asked clarifying questions concerning military civil surgeons who must move due to reassignment. Specifically, the commenter was concerned that civil surgeons who must move frequently due to military orders would be subject to the fee on multiple occasions. DHS recognizes that any civil surgeon, whether military or civilian, may move to a different jurisdiction. Any civil surgeon changing his or her address will be required to update USCIS on the change, and include evidence of continued eligibility to serve as a civil surgeon by submitting this information to their local field office so the civil surgeon roster can be updated accordingly. At this time, USCIS does not intend to charge a fee to update an address if a civil surgeon has already been designated appropriately.

An additional concern expressed about the civil surgeon designation fee was its impact on the availability of civil surgeons throughout the United States. In particular, a commenter indicated that few civil surgeons are available in certain parts of the country and that the new fee will make it more difficult for individuals to receive the designation. The commenter also indicated that this result will, in turn, ultimately prohibit eligible applicants for immigration benefits from receiving the necessary medical clearance and applying for their benefits.

While DHS is aware of the fact that the availability of civil surgeons in some areas of the country is greater than in others, it does not believe that this discrepancy and the imposition of the new fee denies applicants the opportunity to apply for immigration benefits. Based on the existing roster of civil surgeons, the number of civil surgeons in any given area appears to correlate favorably with the projected number of potential immigrants needing medical examinations. USCIS is always interested in increasing the number of civil surgeons in areas of low availability in an effort to reduce the potential cost impact of this statutorily-required exam. While access to civil surgeons in rural areas may be limited, the commenter has only speculated that a new fee would preclude reasonable access to civil surgeons. DHS is not aware of evidence that supports the commenter's speculation and the commenter did not provide any additional data to support these claims.

DHS has a responsibility to ensure the integrity of the civil surgeon program and has set a fee that recovers the operational costs for this program, the appropriate overhead and the appropriate spread of policy decision costs. Without this fee, work performed to designate and maintain the civil surgeon roster would continue to be borne by all fee-paying applicants and petitioners. Requiring physicians to pay for this designation shifts the costs from the general applicant population to the physicians who perform the examinations and who may derive financial benefit (such as a fee) from such examinations. No changes to the final rule were made as a result of these comments.

3. EB–5 Regional Center Designation Fee and Form

Most EB–5 related comments acknowledged the need for a regional center designation fee. The commenters expressed support for the fee, while also noting the need for improvements in processing times, collaborative efforts, and regulatory development. USCIS continues to strive for improved processing times, has committed to improved stakeholder communications with quarterly stakeholder meetings, and will pursue regulatory development when practical.

Several commenters, referencing the supporting documentation, suggested that DHS calculated the Regional Center Amendment fee in violation of OMB Circular A–25. These comments suggested that the DHS Supporting Statement: Application for Regional Center under the Immigrant Investor Pilot Program, Form I–924, and Form I–924A (OMB No. 1615–NEW), Docket No. USCIS–2009–0033–0003–0006, show 40 hours to adjudicate an initial designation and only 10 hours to adjudicate an amendment. DHS disagrees with the commenters. The time burden outlined in the supporting statement is an estimate of the amount of time it takes for filers to complete the form, not the time it takes to adjudicate the form. This review, and documentation required by the Paperwork Reduction Act, are discussed elsewhere in this preamble. A review of a substantial number of recently filed amendment requests by previously designated regional centers reveals that most amendments involve a diverse variety of adjudicative issues, such as changes in geographic scope, organizational structure, capital investment projects, and exemplar Forms I–526, Immigrant Petition by Alien Entrepreneur. No changes were made to the final rule as a result of these comments.

Another commenter mentioned the proposed amendment to 8 CFR 204.6(m)(6), which would provide for an annual reporting requirement for Regional Centers in connection with the USCIS authority to terminate a regional center's designation. The commenter suggested that the language "no longer serves the purpose of promoting economic growth," was vague, and in need of more specifics regarding practices that are either prohibited or required in order for the regional center to continue to "serve the purpose of promoting economic growth." The commenter recommended that USCIS adopt a rule to ensure ongoing regional center compliance, such as termination proceedings if a regional center does not file a single Immigrant Petition by Alien Entrepreneur within a fiscal year.

DHS notes that the regulation at 8 CFR 204.6(m)(6) already provides a means to terminate a regional center if the regional center "no longer serves the purpose" of the program. DHS believes that the potential reasons for the termination of a regional center extend beyond inactivity on the part of a regional center. This regulation currently provides for a process of notice and rebuttal. The amended regulatory language leaves this process intact. Regional centers have been and will be provided with ample opportunity to overcome the reasons for termination of the regional center under this process. DHS is exploring means by which information regarding termination proceedings may be shared, and will consider making this information available in the annual disclosure report. DHS is making no changes in the final rule as a result of this comment.

A number of comments mentioned statutory, regulatory, and policy-oriented issues that were outside the scope of the proposed rule, like job creation requirements for the Immigrant Investor Pilot Program. The final rule does not address comments seeking changes in United States statutes, changes in regulations or immigration benefits unrelated to, not reasonably related to the fee structure or impacting the fee structure, and not addressed by the proposed rule, changes in procedures of other components within DHS or other agencies, or the resolution of any other issues not within the scope of the rulemaking or the authority of DHS.

H. Methods Used To Determine Fee Amounts

A number of comments questioned or requested additional information on the methodology used to determine USCIS costs. Others questioned the costs and calculations provided in the proposed rule, while some requested an invoice that details the costs of services. USCIS has made no changes to the final rule as a result of these comments.

Detailed information on the fee review methodology and the cost components and calculations was provided in the proposed rule and remains posted in the docket of this rule at www.regulations.gov. This information will also be provided directly by USCIS upon request. The underlying supporting elements, such as independent legal requirements, the General Schedule pay scales, or travel reimbursement rates, are all publicly available. In the proposed rule, USCIS offered an opportunity to review the functioning of the computerized cost model used by USCIS through onsite viewing on its computer system. While USCIS cannot provide complete access to the computer software purchased under license, the USCIS fee determination is, within reason, an open process. A summary of how calculations were made and results achieved was available for review upon request. USCIS did not receive any requests to access the modeling program. We have made no changes to the final rule as a result of these comments.

1. Reductions to USCIS Costs

A number of commenters suggested that USCIS reduce its costs before implementing a fee increase. USCIS agrees that cost savings are an important part of its fee evaluation. The FY 2010 enacted appropriation and the FY 2011 President's budget request provided significant appropriations ($55 million in FY 2010 and $238 million in FY 2011) to reduce surcharges placed on fee-paying applicants and petitioners for programs related to refugee and asylum benefits. The FY 2011 appropriations request also includes the cost of the Office of Citizenship and the SAVE programs—two programs previously funded by immigration benefit fees. The President's total appropriation request for USCIS was more than $385 million.

In addition to removing almost 10% of costs from the fee structure, at the beginning of FY 2010, USCIS implemented approximately $160 million in operational budget cuts. USCIS has reduced about 170 federal positions, executed a number of hiring freezes, and significantly reduced overtime spending. All USCIS offices faced an across-the-board reduction to general expenses and certain contracts were reduced due to lower workloads. DHS believes that these actions to reduce costs and fee burdens on fee-funded programs have been significant, and fully expects USCIS to continue to focus on cost reduction and efficiency in future fee reviews. No changes have been made to the final rule as a result of these comments.

2. Appropriations

Many commenters commended the Administration's request for appropriated funding to eliminate surcharges. Some commenters stated that USCIS should request even more appropriated funding to cover its costs. Commenters suggested expanding the use of appropriated funds to fraud-related activities, asylum and refugee services, infrastructure improvements, overhead, and long-term investments. Other commenters opined that taxpayers should not bear the burden of funding immigration-related activities and strongly opposed the use of appropriated funding for USCIS operational purposes. DHS is committed to reducing surcharges through the use of appropriations and will continue to consider such options that have the potential of providing additional cost relief without undue burden on taxpayers.

Some commenters questioned the reliance by USCIS on appropriations in cost estimates determined prior to the approval of those appropriations. USCIS recognizes a certain level of uncertainty that is created by the timing of the federal budget process and this fee rule (if the congressional budget process for the fee rule's biennial period was completed before the fee rule was finalized). Nonetheless, USCIS must review its fees biennially and cannot delay necessary rulemaking for the benefit of the appropriations process. DHS is well aware of the impact of including appropriated funding in USCIS cost estimates and USCIS has analyzed (included in the proposed rule) fee schedules under a number of different appropriation scenarios to satisfy the requirements of the Administrative Procedure Act. The various fee schedules provided the public with the highest and lowest possible fees based on the highest and lowest cost base.

Further, DHS statutory and regulatory reviews considered the uncertainty of appropriations funding. DHS shares the commenters' concerns and took steps to insulate the regulatory flexibility analysis from understating impacts to small entities. To this end, as stated in the proposed rule, DHS utilized fees calculated without appropriations in the analysis, which illustrated the largest potential impact of the fee increase on small entities. DHS has determined that the fee schedule should continue to be based on the President's requested appropriation. USCIS will make necessary operational changes to accommodate an appropriation that does not fulfill the President's request. Accordingly, DHS makes no changes to the final rule as a result of these comments.

I. Other Comments

A number of comments were not linked to the substance of the proposed rule and criticized the rule for not addressing other immigration law issues. Some commenters addressed issues related to comprehensive legislative immigration reform. Others suggested changes to the substantive regulations implementing the immigration laws by USCIS, CBP, U.S. Immigration and Customs Enforcement, and other agencies that do not have an impact on the fee structure or amounts. Some commenters expressed dissatisfaction with the visa allocation process, which is established by the Congress, and outside of the scope of DHS operations.

DHS cannot address comments seeking changes in United States statutes, changes in regulations or immigration benefits unrelated to the proposed rule, changes in procedures of other components within the Department of Homeland Security that are not linked to the fee schedule or processes, or regulations of other agencies, or the resolution of any other issues not within the authority of DHS. Although beyond this scope, three comments are discussed below in order to clarify certain issues.

1. Visa Allocation and Unused Visa Numbers

Several commenters expressed concern that USCIS would raise fees during a time when many employment-based adjustment of status filers are experiencing long waits for their visas. Although these long waits are due to visa retrogression in oversubscribed categories, some attributed it to USCIS processing inefficiencies and questioned a fee hike in the face of such delays. Others attributed the long waits to the mismanagement of the visa allocation and coordination process between USCIS and DOS and noted that many numerically-limited visas have gone unused.

The notion that USCIS processing inefficiencies contribute to the long wait for visas appears unfounded, as there is currently an average processing time of four months for an Application to Register Permanent Residence or Adjust Status, Form I–485, for which visas remain available. This timeframe meets the processing goal set forth in the 2008/2009 fee rule. *See* 72 FR 4888, 4893. Significant improvements have also been made in the visa coordination process between DOS and USCIS. USCIS and DOS confer monthly on pending visa demand, workload capabilities, and forecasting of immigration trends. For example, if USCIS analysis finds a period of low demand in a particular visa preference category, DOS is able to respond by advancing the priority dates rapidly to ensure that all allotted visas will be used in a particular fiscal year. USCIS and DOS continue to consider ideas and options to further improve the visa coordination process between the two and reduce the occurrence of visa retrogression or future unused numbers.

Some commenters suggested that USCIS recapture unused visa numbers from recent years as a way to reduce the backlog of pending adjustment of status cases. By recapturing these numbers, it was suggested that visa priority cut-off dates would advance, allowing for many new filings and thereby increasing USCIS revenue without a need to raise fees. However, the authority to recapture any unused visa numbers from previous years resides with Congress and is not available to USCIS as an administrative remedy. *See* INA section 201, 8 U.S.C. 1151. Moreover, increasing the number of filings concurrently increases the amount of work to be performed, thus consuming the fees generated. Even if legally possible, this solution would not be practical.

Due to the long wait for visa numbers in particular categories, several commenters disagreed with a fee hike as they noted costs would rise for intending immigrants either seeking to maintain their status in the United States or receiving ongoing interim benefits while awaiting visa numbers. It is noted, however, that U.S. employers may not recoup the costs required to file for a nonimmigrant employee or his/her extension or change of status; thus, the costs are borne by the employer and not the intending immigrant seeking to maintain his/her status. Furthermore, as of the fee structure instituted in 2007, applicants for adjustment of status who request advance parole and employment authorization are exempt from payment of additional fees while their Forms I–485 are pending. Thus, this is not a valid concern for these individuals.

USCIS acknowledges that employment-based Form I–485 filers who filed under the old fee structure, prior to August 18, 2007, must continue to pay fees associated with interim benefits. While USCIS has no control over the Department of State's allocation of visa numbers, nor over the yearly visa numerical limits as established by Congress, it has nonetheless been sympathetic to those who have pending adjustment of status applications in categories experiencing extreme visa retrogression. To alleviate the filing burden on these individuals and associated costs, USCIS initiated a policy in June 2008 whereby an EAD would have a two-year validity period for these affected individuals, effectively reducing ongoing costs for the benefit by an estimated 50 percent. USCIS is further adopting a policy whereby those same affected individuals may receive an advance parole document with a two-year validity period to further alleviate their filing burdens. The number of filers affected by FY 2007 visa retrogression continues to decline as visa numbers are allocated.

One commenter suggested the creation of a variable fee structure depending on the wait for a visa number. As wait times fluctuate due to a myriad of factors, including visa number restrictions, per-country limits, and changes in demand, it would be impractical to adopt this suggestion as there would be no way to project what the future delays and fees would be.

2. Increased Periods of Validity for Travel and Employment Documents

A number of commenters requested that USCIS offer multi-year employment authorization documents (Form I–765) and travel documents (Form I–131). Commenters cited the financial burden of submitting multiple applications for both services while their adjustment of status cases are pending. Some commenters also mentioned the administrative burden created when trying to time the filing of the documents so as not to produce instances of overlapping validity.

USCIS has no interest in artificially limiting the validity periods of these documents. In many instances, these validity periods are directly related to the length of the underlying status which created eligibility for these associated benefits. For example, a permanent resident who remains outside the United States for more than one year may be questioned on his or her return based on the validity of his or her Permanent Resident Card, Form I–551. 8 CFR 211.3. If that individual applied for a reentry permit before departure from the foreign country, and the application is granted, then the one year validity of the Form I–551 is extended to two years. 8 CFR 223.3(a), (d). The current two-year validity of the reentry permit matches this period. Issuing it for a longer validity period could create confusion and result in some permanent residents remaining abroad for too long and potentially jeopardizing their status. The validity period of a travel document or EAD is generally linked to the validity period of the relating immigration status.

The issuance of interim benefits based on an application for an adjustment of status was in some respects an exception to this rule. However, in the 2008/2009 final fee rule, USCIS eliminated extension application fees for both advance paroles and EADs—issuing them without charge since they were paid as part of the Form I–485 fee. *See* 72 FR 29851, 29873. Subsequently, USCIS extended the validity period to two years for new EADs issued to applicants for adjustment of status for whom a visa number was not available. *See* 8 CFR 274a.12(a) (authorizing USCIS to determine the validity period for EADs). This change was done in part to eliminate any perception that different renewal cycles were simply a means of generating revenue from applicants and petitioners who had applied under the prior fee structure. The two-year renewal is based on the need to periodically evaluate continuing eligibility for these associated benefits, whether provided without additional charge or through a fee.

3. Suggested I–94 Fee

One commenter suggested that USCIS charge a fee for the cost of recordkeeping and filing of an Arrival-Departure Record, Form I–94, issued at the POE for non-immigrant visa and visa waiver admissions. The commenter believed that this is a much larger population and a more tedious task than collection of the new immigrant visa domestic processing fee. DHS has not adopted the commenter's suggestion. Form I–94 and any fees associated with the form are handled by CBP, another DHS component, and are beyond the scope of this rulemaking.

J. Discussion of Comments Received in Response to the June 1, 2001, Interim Rule

On June 1, 2001, the Immigration and Naturalization Service, as predecessor to USCIS, published an interim rule with request for comments in the **Federal Register** which:

- Added a new paragraph to 8 CFR 103.2(f) to set the procedural requirements to request premium processing, designate applications and petitions as eligible, clarify the fees, and provide for the announcement of the temporary termination of the service;
- Amended 103.7(b) and (c) to establish a premium processing fee;
- Amended 103.7(c) to provide that the premium processing fee cannot be waived; and
- Amended 299.1 to provide that Form I–907 should be used to request premium processing service.

Establishing Premium Processing for Employment-Based Petitions and Applications, 66 FR 29682 (June 1, 2001). The interim rule implemented the District of Columbia Appropriations Act, 2001, Public Law 106–553, 114 Stat. 2762 (2000). The legislation added a new INA section 286(u) that authorized the collection of a $1,000 "premium processing" fee in addition to the regular filing fee for certain petitions and applications. The legislation limited the authority to collect the premium processing fee to employment-based petitions and applications. INA section 286(u), 8 U.S.C. 1356(u).

INS provided a 60 day comment period and received 78 public comments relating to the interim rule from performing arts organizations; attorneys, management companies, and representatives of performing arts organizations; and associations of attorney and business personnel. Many of the issues raised were addressed above in response to comments received on the proposed fee rule and that discussion will not be repeated. Virtually all commenters repeated the following points:

- Although INS allows non-profit organizations to request expedited processing without charge, some do not qualify and the process is unreliable;
- Expedited processing should be completed in less than 15 days;
- INS did not provide enough advance notice of this immediately effective change or how it would affect cases already filed; and
- O–2 and P visa support petitions and petition amendments should be

included within the premium processing fee for the principal. Each of these comments will be discussed below.

The commenters suggested that USCIS complete its processing in a shorter timeframe than 15 days. Although we understand this request, DHS has determined that 15 days is reasonable and it is unable to guarantee processing in any time shorter than the 15 day period provided in the rule.

The commenters complained that the interim rule was immediately effective on publication and did not address its applicability to cases already filed. As explained in the interim rule, INS determined that it found good cause to adopt the rule without prior notice and comment and that any delayed implementation would be contrary to the public interest. 66 FR 29682, 29684. Since the interim rule has now been in effect for over nine years and any then-pending cases have been decided, DHS will not make any changes to the rule in response to these comments.

The commenters also suggested that there be no additional charge for petitions filed on behalf of O–2 non-immigrant visa dependents, P visa essential support personnel, and petition amendments. As discussed above, USCIS fee methodology is premised on the relative cost to adjudicate each petition and therefore, it must charge a fee for each petition and each request for premium processing. As such, DHS cannot adopt the commenters' suggestion that one premium processing fee cover several petitions or petition amendments.

In addition, two commenters mentioned the impact of the rule on Canadian performers who depend on income received from short notice, short term engagements in the United States. USCIS has decreased its processing times for O and P petitions; therefore, no special accommodation is needed for Canadian performers. USCIS has made no change to the interim rule as a result of them.

One commenter praised the premium processing service but complained that it would exacerbate H–1B processing for teachers and school administrators. The commenter also noted the adverse impact of the timing of H–1B filing season on educational institutions. USCIS has decreased its processing times for H–1B petitions and seeks to further improve that process. However, the number of H–1B visas available each year is fixed by statute and beyond the control of USCIS. INA section 214(g), 8 U.S.C. 1184(g).

Two commenters sought assurances that USCIS would promptly respond to submissions made in response to Requests for Evidence and Notices of Intent to Deny to avoid further processing delays and suggested amending the regulation to require it. As mentioned, USCIS has decreased its processing times for O and P petitions and has improved its processing and efficiency overall and strives to decide all cases promptly. USCIS has made no change to the interim rule as a result of these comments.

Another commenter reminded that the use of premium processing fees is limited by statute and suggested that a fee waiver be permitted. INA section 286(u), 8 U.S.C. 1356(u). USCIS is certainly aware of the statutory limitation of such fees to "premium-processing services to business customers, and to make infrastructure improvements in the adjudications and customer-service processes" and limits its use of such fees to the authorized purposes. *Id.* Given the significant improvement in processing times, DHS has decided not to permit a fee waiver of the premium processing fee. DHS has made no change to the interim rule as a result of the comment.

One commenter requested that the Application to Register Permanent Residence or Adjust Status, Form I–485, be added to the list of forms eligible for premium processing service. Given the complexity and significance of the adjudication of an application for lawful permanent residence, USCIS is unable to commit to such a timeframe. Although USCIS has decreased its processing time for Forms I–485, at this time it is unable to extend premium processing service to employment-based Forms I–485.

For these reasons, no changes are made to the interim rule as a result of the comments received and the interim rule is adopted as final and changed as described in this rule.

IV. Statutory and Regulatory Reviews

A. Regulatory Flexibility Act—Final Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(6), USCIS examined the impact of this rule on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act, 15 U.S.C. 632), a small not-for-profit organization, or a small governmental jurisdiction (locality with fewer than fifty thousand people). Below is a summary of the small entity analysis. A more detailed analysis titled "Small Entity Analysis for Adjustment of the U.S. Citizenship and Immigration Services Fee Schedule" is available in the rulemaking docket at *http://www.regulations.gov.*

Individuals rather than small entities submit the majority of immigration and naturalization benefit applications and petitions. Entities that would be affected by this rule are those that file and pay the alien's fees for certain immigration benefit applications. Consequently, there are four categories of USCIS benefits that are subject to a RFA analysis for this rule: Petition for a Nonimmigrant Worker (Form I–129); Immigrant Petition for an Alien Worker (Form I–140); Civil Surgeon Designation; and the new Application for Regional Center under the Immigrant Investor Pilot Program (Form I–924). DHS does not believe that the increase in fees proposed in this rule will have a significant economic impact on a substantial number of small entities; nevertheless, DHS is publishing a final regulatory flexibility analysis.

1. Objectives of, and Legal Basis for, the Final Rule

DHS's objectives and legal authority for this final rule are discussed in section III.A of this preamble.

2. Significant Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis

Only one commenter specifically mentioned the IRFA. The commenter was concerned that uncertainty of appropriations funding from Congress would impact the results of the IRFA. DHS shared this concern and took steps to insulate the analysis from understating impacts to small entities. As stated in the proposed rule, DHS utilized fees calculated without appropriations when preparing the IRFA, which illustrated the largest impact of this fee increase on small entities.

A number of general comments on the rule raised concerns about the increase in Form I–129 fees, particularly with respect to non-profit agencies sponsoring musicians to perform in the U.S. These comments were directed at operational and efficiency issues rather than the initial regulatory flexibility analysis. The operational and efficiency comments have been addressed above in section III(B)(2)(d) of this final rule. One of those commenters suggested a separate fee structure for non-profit organizations, but did not provide any further information. As described in the IRFA, this type of fee structure would ultimately lead to increased costs for non-profit organizations in the form of longer wait times and reduced customer service.

Most comments concerning EB–5 Regional Center Designation centered on operational and form-related issues, which are discussed in section III(E)(3) of this final rule. Some commenters recommended a fee-exemption for non-profit Regional Centers. The comments did not provide any analysis to support the need for a fee-exemption for non-profit Regional Centers, such as data indicating that the DHS analysis was lacking and have not been adopted.

Many commenters asserted that fees were too high. These comments are addressed in the response to public comments in section III(B)(2) of this final rule.

3. Description and Estimate of the Number of Small Entities to Which the Rule Will Apply

Entities affected by this final rule are those that file and pay fees for certain immigration benefit applications on behalf of an alien. These petitions and applications include Form I–129, Petition for Nonimmigrant Worker; Form I–140, Immigrant Petition for Alien Worker; Request for Civil Surgeon Designation; and Form I–924, Application for Regional Center. Annual numeric estimates of the small entities impacted by this fee increase total: Form I–129 (87,220 entities), Form I–140 (44,500 entities), Civil Surgeon Designation (1,200 entities), and Form I–924 (132 entities).

This rule applies to small entities, including businesses, non–profit organizations, and governmental jurisdictions filing for the above benefits. Forms I–129 and I–140 will see a number of industry clusters impacted by this rule (*see* Appendix A of the Small Entity Analysis for a list of the impacted industry codes). The fee for Civil Surgeon designation will impact physicians seeking to be designated as Civil Surgeons. Finally, Form I–924 will impact any entity requesting approval and designation to be a Regional Center under the Immigrant Investor Pilot Program.

4. Reporting, Recordkeeping and Other Compliance Requirements

This final rule imposes higher fees for filers of Forms I–129 and I–140, and new fees for filers of Civil Surgeon Designation requests and Form I–924, EB–5 Regional Center applications. The new fee structure, as it applies to the small entities outlined above, results in the following fees: Form I–129 ($355), Form I–140 ($630), Civil Surgeon Designation ($615), and Form I–924 ($6,820). As discussed in the IRFA, in order not to underestimate the impact of this rule, DHS analyzed fees based on non-appropriated funding. DHS has applied these same assumptions to the FRFA. The final rule does not require any new professional skills for reporting.

5. Steps Taken To Minimize Significant Adverse Economic Impacts on Small Entities

Section 286(m) of the INA provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including services provided without charge to asylum applicants and certain other immigrant applicants. In addition, DHS must fund the costs of providing services without charge by using a portion of the filing fees collected for other immigration benefits. Without an increase in fees, USCIS will not be able to provide applicants and petitioners with the same levels of service for immigration and naturalization benefits. DHS has considered and rejected the alternative of maintaining fees at the current level with reduced services and increased wait times.

While most immigration benefit fees apply to individuals, as described above, some also apply to small entities. USCIS seeks to minimize the impact on all parties, but in particular on small entities. An alternative to the increased economic burden of the fee adjustment is to maintain fees at their current level for small entities. The strength of this alternative is that it assures that no additional fee-burden is placed on small entities; however, this alternative also would cause negative impacts to small entities.

Without the fee adjustments provided in this final rule, significant operational changes to USCIS would be necessary. Given current filing volume and other economic considerations, additional revenue is necessary to prevent immediate and significant cuts in planned spending. These spending cuts would include reductions in areas such as federal and contract staff, infrastructure spending on information technology and facilities, travel, and training. Depending on the actual level of workload received, these operational changes would result in longer application processing times, a degradation in customer service, and reduced efficiency over time. These cuts would ultimately represent an increased cost to small entities by causing delays in benefit processing and less customer service.

B. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires certain actions to be taken before an agency promulgates any notice of rulemaking "that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year." 2 U.S.C. 1532(a). While this rule may result in the expenditure of more than $100 million by the private sector annually, the rulemaking is not a "Federal mandate" as defined for UMRA purposes, 2 U.S.C. 658(6), as the payment of immigration benefit fees by individuals or other private sector entities is, to the extent it could be termed an enforceable duty, one that arises from participation in a voluntary Federal program, applying for immigration status in the United States. 2 U.S.C. 658(7)(A)(ii). Therefore, no actions were deemed necessary under the provisions of the UMRA.

C. Small Business Regulatory Enforcement Fairness Act

This rulemaking is a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rulemaking will result in an annual effect on the economy of more than $100 million, in order to generate the revenue necessary to fully fund the increased cost associated with the processing of immigration benefit requests and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants; and the full cost of similar benefits provided to other immigrants, as specified in the proposed regulation, at no charge. The increased costs will be recovered through the fees charged for various immigration benefit applications.

D. Executive Order 12866

This rule is considered by the Department of Homeland Security to be an economically significant regulatory action under Executive Order 12866, section 3(f)(1), Regulatory Planning and Review. Accordingly, this rule has been reviewed by the Office of Management and Budget.

The implementation of this rule would provide USCIS with an average of $209 million in FY 2010 and FY 2011 annual fee revenue, based on a projected annual fee-paying volume of 4.4 million immigration benefit requests and 1.9 million requests for biometric services, over the fee revenue that would be collected under the current fee structure. This increase in revenue will be used pursuant to sections 286(m) and (n) of the INA, 8 U.S.C. 1356(m) and (n), to fund the full costs of processing immigration benefit applications and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants; and the full cost of similar benefits provided to others at no charge.

If USCIS does not adjust current fees to recover the full costs of processing immigration benefit requests, USCIS would be forced to implement additional significant spending reductions resulting in a reversal of the considerable progress it has made over the last several years to reduce the backlogs of immigration benefit filings, to increase the integrity of the immigration benefit system, and to protect national security and public safety. The revenue increase is based on USCIS costs and projected volumes that were available at the time the final rule was drafted. USCIS has placed a detailed analysis in the rulemaking docket that explains the basis for the annual fee increase and has included the required OMB Circular A–4 detailing the annualized impacts of the rule in table 2.

TABLE 2—OMB CIRCULAR A–4 ACCOUNTING STATEMENT

[FY 2010 through FY 2011 (2009 Dollars)]

Category	Primary estimate
Transfers	
Annualized Monetized Transfers at 3%	$209,264,850
Annualized Monetized Transfers at 7%	$209,264,850

E. Executive Order 13132

This rulemaking will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Homeland Security has determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, 109 Stat. 163 (1995) (PRA), all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a rule. This rule creates two new information collections.

- Application for Civil Surgeon Designation, and
- Form I–924 and Form I–924A, Application for Regional Center under the Immigrant Investor Pilot Program.

In accordance with the PRA, DHS published a 60-day notice in the **Federal Register** on June 11, 2010, at 75 FR 33446, requesting comments on the two new information collections. The comments on the Application for Civil Surgeon Designation and DHS's response can be found in section IV(G)(2) of this final rule. The comments on the Forms I–924 and I–924A, Application for Regional Center under the Immigrant Investor Pilot Program, and DHS's response can be found in section IV(G)(3) of this final rule, and in an attachment to the supporting statement that will be posted to *www.regulations.gov.*

As required by the PRA, the two new information collections were submitted to the Office of Management and Budget (OMB) for review and approval. OMB has approved the Application for Civil Surgeon Designation. The approved OMB Control No. is 1615–0114.

DHS made some edits to the Forms I–924, and I–924A, based on the public comments and resubmitted these amended forms to OMB for review and approval.

DHS is requesting comments on the Forms I–924 and I–924A for 30 days until October 25, 2010. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of Information Collection: Immigration Investor Pilot Program.

a. *Type of information collection:* Revised information collection.

b. *Abstract:* This collection will be used by individuals and businesses to file a request for USCIS approval and designation as a Regional Center on behalf of an entity under the Immigrant Investor Pilot Program.

c. *Title of Form/Collection:* Application for Regional Center under the Immigrant Investor Pilot Program.

d. *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–924 and Form I–924A; U.S. Citizenship and Immigration Services.

e. *Affected public who will be asked or required to respond:* Individuals and businesses.

f. *An estimate of the total number of respondents:* 132 respondents filing Form I–924, and 116 respondents filing Form I–924A.

g. *Hours per response:* Form I–924 at 40 hours per response, and Form I–924A at 3 hours per response.

h. *Total Annual Reporting Burden:* 4,428 hours.

Comments concerning Form I–924 and I–924A can be submitted to the Department of Homeland Security, USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, NW., Washington, DC 20529–2210.

The changes to the fees will require minor amendments to immigration benefit and petition forms to reflect the new fees. The necessary changes to the annual cost burden and to the forms have been submitted to OMB using OMB Form 83–C, Correction Worksheet, and OMB has approved these changes.

List of Subjects

8 CFR Part 103

Administrative practice and procedures, Authority delegations (government agencies), Freedom of Information; Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 204

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 244

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274A

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

■ Accordingly, the interim rule "Establishing Premium Processing for Employment-Based Petitions and Applications," published at 66 FR 29682 on June 1, 2001, is adopted as a final rule with the following changes:

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 et seq.); E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

§ 103.2 [Amended]

■ 2. Section 103.2 is amended by:
■ a. Removing paragraph (e)(4)(ii);
■ b. Redesignating paragraphs (e)(4)(iii), and (e)(4)(iv), as paragraphs (e)(4)(ii), and (e)(4)(iii), respectively; and by
■ c. Removing paragraph (f).

■ 3. Section 103.7 is amended by:
■ a. Revising paragraphs (b) and (c);
■ b. Redesignating paragraph (d) as paragraph (f);
■ c. Adding new paragraphs (d) and (e); and by
■ d. Revising newly redesignated paragraph (f).

The revisions and additions read as follows:

§ 103.7 Fees.

* * * * *

(b) *Amounts of fees.* (1) *Prescribed fees and charges.* (i) *USCIS fees.* A request for immigration benefits submitted to USCIS must include the required fee as prescribed under this section. The fees prescribed in this section are associated with the benefit, the adjudication, and the type of request and not solely determined by the form number listed below. The term "form" as defined in 8 CFR part 1, may include a USCIS-approved electronic equivalent of such form as USCIS may prescribe on its official Web site at *http//www.uscis.gov.*

(A) *Certification of true copies:* $2.00 per copy.

(B) *Attestation under seal:* $2.00 each.

(C) *Biometric services (Biometric Fee).* For capturing, storing, or using biometrics (Biometric Fee). A service fee of $85 will be charged of any individual who is required to have biometrics captured, stored, or used in connection with an application or petition for certain immigration and naturalization benefits (other than asylum), whose application fee does not already include the charge for biometric services. No biometric services fee is charged when:

(*1*) A written request for an extension of the approval period is received by USCIS prior to the expiration date of approval of an Application for Advance Processing of Orphan Petition, if a Petition to Classify Orphan as an Immediate Relative has not yet been submitted in connection with an approved Application for Advance Processing of Orphan Petition. This extension without fee is limited to one occasion. If the approval extension expires prior to submission of an associated Petition to Classify Orphan as an Immediate Relative, then a complete application and fee must be submitted for a subsequent application.

(*2*) The application or petition fee for the associated benefit request has been waived under paragraph (c) of this section; or

(*3*) The associated benefit request is an Application for Posthumous Citizenship (Form N–644); Refugee/Asylee Relative Petition (Form I–730); Application for T Nonimmigrant Status (Form I–914); Petition for U Nonimmigrant Status (Form I–918); Application for Naturalization (Form N–400) by an applicant who meets the requirements of sections 328 or 329 of the Act with respect to military service under paragraph (b)(1)(i)(WW) of this section; Application to Register Permanent Residence or Adjust Status (Form I–485) from an asylee under paragraph (b)(1)(i)(U) of this section; Application To Adjust Status under Section 245(i) of the Act (Supplement A to Form I–485) from an unmarried child less than 17 years of age, or when the applicant is the spouse, or the unmarried child less than 21 years of age of a legalized alien and who is qualified for and has applied for voluntary departure under the family unity program from an asylee under paragraph (b)(1)(i)(V) of this section; or a Petition for Amerasian, Widow(er), or Special Immigrant (Form I–360) meeting the requirements of paragraphs (b)(1)(i)(T)(*1*), (*2*), (*3*) or (*4*) of this section.

(D) *Immigrant visa DHS domestic processing fees.* For DHS domestic processing and issuance of required documents after an immigrant visa is issued by the Department of State: $165.

(E) *Request for a search of indices to historical records to be used in genealogical research (Form G–1041):* $20. The search fee is not refundable.

(F) *Request for a copy of historical records to be used in genealogical research (Form G–1041A):* $20 for each file copy from microfilm, or $35 for each file copy from a textual record. In some cases, the researcher may be unable to determine the fee, because the researcher will have a file number obtained from a source other than USCIS and therefore not know the format of the file (microfilm or hard copy). In this case, if USCIS locates the file and it is a textual file, USCIS will notify the researcher to remit the additional $15. USCIS will refund the records request fee only when it is unable to locate the file previously identified in response to the index search request.

(G) *Application to Replace Permanent Resident Card (Form I–90).* For filing an application for a Permanent Resident Card (Form I–551) in lieu of an obsolete card or in lieu of one lost, mutilated, or destroyed, or for a change in name: $365.

(H) *Application for Replacement/Initial Nonimmigrant Arrival–Departure Document (Form I–102).* For filing a petition for an application for Arrival/Departure Record (Form I–94) or Crewman's Landing Permit (Form I–95), in lieu of one lost, mutilated, or destroyed: $330.

(I) *Petition for a Nonimmigrant Worker (Form I–129).* For filing a petition for a nonimmigrant worker: $325.

(J) *Petition for Nonimmigrant Worker in CNMI (Form I–129CW).* For an employer to petition on behalf of one or more beneficiaries: $325 plus a supplemental CNMI education funding fee of $150 per beneficiary per year. The CNMI education funding fee cannot be waived.

(K) *Petition for Alien Fiancé(e) (Form I–129F).* For filing a petition to classify a nonimmigrant as a fiancée or fiancé under section 214(d) of the Act: $340; there is no fee for a K–3 spouse as designated in 8 CFR 214.1(a)(2) who is the beneficiary of an immigrant petition filed by a United States citizen on a Petition for Alien Relative (Form I–130).

(L) *Petition for Alien Relative (Form I–130).* For filing a petition to classify status of an alien relative for issuance of an immigrant visa under section 204(a) of the Act: $420.

(M) *Application for Travel Document (Form I–131).* For filing an application for travel document:

(*1*) $165 for a Refugee Travel Document for an adult age 16 or older.

(*2*) $105 for a Refugee Travel Document for a child under the age of 16.

(*3*) $360 for advance parole and any other travel document.

(*4*) No fee if filed in conjunction with a pending or concurrently filed Application to Register Permanent Residence or Adjust Status (Form I–485) when that application was filed with a fee on or after July 30, 2007.

(N) *Immigrant Petition for Alien Worker (Form I–140).* For filing a petition to classify preference status of an alien on the basis of profession or occupation under section 204(a) of the Act: $580.

(O) *Application for Advance Permission to Return to Unrelinquished Domicile (Form I–191).* For filing an application for discretionary relief under section 212(c) of the Act: $585.

(P) *Application for Advance Permission to Enter as a Nonimmigrant (Form I–192).* For filing an application for discretionary relief under section 212(d)(3) of the Act, except in an emergency case or where the approval of the application is in the interest of the United States Government: $585.

(Q) *Application for Waiver for Passport and/or Visa (Form I–193).* For filing an application for waiver of passport and/or visa: $585.

(R) *Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I–212).* For filing an application for permission to reapply for an excluded, deported or removed alien, an alien who has fallen into distress, an alien who has been removed as an alien enemy, or an alien who has been removed at government expense in lieu of deportation: $585.

(S) *Notice of Appeal or Motion (Form I–290B).* For appealing a decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction: $630. The fee will be the same for appeal of a denial of a benefit request with one or multiple beneficiaries. There is no fee for an appeal or motion associated with a denial of a petition for a special immigrant visa from an Iraqi or Afghan national who worked for or on behalf of the U.S. Government in Iraq or Afghanistan.

(T) *Petition for Amerasian, Widow(er), or Special Immigrant (Form I–360).* For filing a petition for an Amerasian, Widow(er), or Special Immigrant: $405. The following requests are exempt from this fee:

(*1*) A petition seeking classification as an Amerasian;

(*2*) A self–petitioning battered or abused spouse, parent, or child of a United States citizen or lawful permanent resident;

(*3*) A Special Immigrant Juvenile; or

(*4*) An Iraqi or Afghan national who worked for, or on behalf of the U.S. Government in Iraq or Afghanistan.

(U) *Application to Register Permanent Residence or Adjust Status (Form I–485).* For filing an application for permanent resident status or creation of a record of lawful permanent residence:

(*1*) $985 for an applicant 14 years of age or older; or

(*2*) $635 for an applicant under the age of 14 years when it is:

(*i*) Submitted concurrently for adjudication with the Form I–485 of a parent;

(*ii*) The applicant is seeking to adjust status as a derivative of his or her parent; and

(*iii*) The child's application is based on a relationship to the same individual who is the basis for the child's parent's adjustment of status, or under the same legal authority as the parent.

(*3*) There is no fee if an applicant is filing as a refugee under section 209(a) of the Act.

(V) *Application to Adjust Status under section 245(i) of the Act (Supplement A to Form I–485).* Supplement A to Form I–485 for persons seeking to adjust status under the provisions of section 245(i) of the Act: $1,000. There is no fee when the applicant is an unmarried child less than 17 years of age, or when the applicant is the spouse, or the unmarried child less than 21 years of age of a legalized alien and who is qualified for and has applied for voluntary departure under the family unity program.

(W) *Immigrant Petition by Alien Entrepreneur (Form I–526).* For filing a petition for an alien entrepreneur: $1,500.

(X) *Application To Extend/Change Nonimmigrant Status (Form I–539).* For filing an application to extend or change nonimmigrant status: $290.

(Y) *Petition to Classify Orphan as an Immediate Relative (Form I–600).* For filing a petition to classify an orphan as an immediate relative for issuance of an immigrant visa under section 204(a) of the Act. Only one fee is required when more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters: $720.

(Z) *Application for Advance Processing of Orphan Petition (Form I–600A).* For filing an application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.): $720. No fee is charged if Form I–600 has not yet been submitted in connection with an approved Form I–600A subject to the following conditions:

(*1*) The applicant requests an extension of the approval in writing and the request is received by USCIS prior to the expiration date of approval.

(*2*) The applicant's home study is updated and USCIS determines that proper care will be provided to an adopted orphan.

(*3*) A no fee extension is limited to one occasion. If the Form I–600A approval extension expires prior to submission of an associated Form I–600, then a complete application and fee must be submitted for any subsequent application.

(AA) *Application for Waiver of Ground of Inadmissibility (Form I–601).* For filing an application for waiver of grounds of inadmissibility: $585.

(BB) *Application for Waiver of the Foreign Residence Requirement (under Section 212(e) of the Act) (Form I–612).* For filing an application for waiver of the foreign residence requirement under section 212(e) of the Act: $585.

(CC) *Application for Status as a Temporary Resident under Section 245A of the Act (Form I–687).* For filing an application for status as a temporary resident under section 245A(a) of the Act: $1,130.

(DD) *Application for Waiver of Grounds of Inadmissibility under Sections 245A or 210 of the Act (Form I–690).* For filing an application for waiver of a ground of inadmissibility under section 212(a) of the Act in conjunction with the application under sections 210 or 245A of the Act, or a petition under section 210A of the Act: $200.

(EE) *Notice of Appeal of Decision under Sections 245A or 210 of the Act (or a petition under section 210A of the Act) (Form I–694).* For appealing the denial of an application under sections 210 or 245A of the Act, or a petition under section 210A of the Act: $755.

(FF) *Application to Adjust Status from Temporary to Permanent Resident*

(Under Section 245A of Public Law 99–603) (Form I–698). For filing an application to adjust status from temporary to permanent resident (under section 245A of Public Law 99–603): $1020. The adjustment date is the date of filing of the application for permanent residence or the applicant's eligibility date, whichever is later.

(GG) *Petition to Remove the Conditions of Residence based on marriage (Form I–751).* For filing a petition to remove the conditions on residence based on marriage: $505.

(HH) *Application for Employment Authorization (Form I–765):* $380; no fee if filed in conjunction with a pending or concurrently filed Application to Register Permanent Residence or Adjust Status (Form I–485) when that request was filed with a fee on or after July 30, 2007.

(II) *Petition to Classify Convention Adoptee as an Immediate Relative (Form I–800).*

(*1*) There is no fee for the first Form I–800 filed for a child on the basis of an approved Application for Determination of Suitability to Adopt a Child from a Convention Country (Form I–800A) during the approval period.

(*2*) If more than one Form I–800 is filed during the approval period for different children, the fee is $720 for the second and each subsequent petition submitted.

(*3*) If the children are already siblings before the proposed adoption, however, only one filing fee of $720 is required, regardless of the sequence of submission of the immigration benefit.

(JJ) *Application for Determination of Suitability to Adopt a Child from a Convention Country (Form I–800A).* For filing an application for determination of suitability to adopt a child from a Convention country: $720.

(KK) *Request for Action on Approved Application for Determination of Suitability to Adopt a Child from a Convention Country (Form I–800A, Supplement 3).* This filing fee is not charged if Form I–800 has not been filed based on the approval of the Form I–800A, and Form I–800A Supplement 3 is filed in order to obtain a first extension of the approval of the Form I–800A: $360.

(LL) *Application for Family Unity Benefits (Form I–817).* For filing an application for voluntary departure under the Family Unity Program: $435.

(MM) *Application for Temporary Protected Status (Form I–821).* For first time applicants: $50. This $50 application fee does not apply to re-registration.

(NN) *Application for Action on an Approved Application or Petition (Form I–824).* For filing for action on an approved application or petition: $405.

(OO) *Petition by Entrepreneur to Remove Conditions (Form I–829).* For filing a petition by entrepreneur to remove conditions: $3,750.

(PP) *Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Pub. L. 105–100) (Form I–881):*

(*1*) $285 for adjudication by the Department of Homeland Security, except that the maximum amount payable by family members (related as husband, wife, unmarried child under 21, unmarried son, or unmarried daughter) who submit applications at the same time shall be $570.

(*2*) $165 for adjudication by the Immigration Court (a single fee of $165 will be charged whenever applications are filed by two or more aliens in the same proceedings).

(*3*) The $165 fee is not required if the Form I–881 is referred to the Immigration Court by the Department of Homeland Security.

(QQ) *Application for Authorization to Issue Certification for Health Care Workers (Form I–905):* $230.

(RR) *Request for Premium Processing Service (Form I–907).* The fee must be paid in addition to, and in a separate remittance from, other filing fees. The request for premium processing fee will be adjusted annually by notice in the **Federal Register** based on inflation according to the Consumer Price Index (CPI). The fee to request premium processing: $1,225. The fee for Premium Processing Service may not be waived.

(SS) *Civil Surgeon Designation.* For filing an application for civil surgeon designation: $615. There is no fee for an application from a medical officer in the U.S. Armed Forces or civilian physician employed by the U.S. government who examines members and veterans of the armed forces and their dependents at a military, Department of Veterans Affairs, or U.S. Government facility in the United States.

(TT) *Application for Regional Center under the Immigrant Investor Pilot Program (Form I–924).* For filing an application for regional center under the Immigrant Investor Pilot Program: $6,230.

(UU) P*etition for Qualifying Family Member of a U–1 Nonimmigrant (Form I–929).* For U–1 principal applicant to submit for each qualifying family member who plans to seek an immigrant visa or adjustment of U status: $215.

(VV) *Application to File Declaration of Intention (Form N–300).* For filing an application for declaration of intention to become a U.S. citizen: $250.

(WW) *Request for a Hearing on a Decision in Naturalization Proceedings (under section 336 of the Act) (Form N–336).* For filing a request for hearing on a decision in naturalization proceedings under section 336 of the Act: $650. There is no fee if filed on or after October 1, 2004, by an applicant who has filed an Application for Naturalization under sections 328 or 329 of the Act with respect to military service and whose application has been denied.

(XX) *Application for Naturalization (Form N–400).* For filing an application for naturalization (other than such application filed on or after October 1, 2004, by an applicant who meets the requirements of sections 328 or 329 of the Act with respect to military service, for which no fee is charged): $595.

(YY) *Application to Preserve Residence for Naturalization Purposes (Form N–470).* For filing an application for benefits under section 316(b) or 317 of the Act: $330.

(ZZ) *Application for Replacement Naturalization/Citizenship Document (Form N–565).* For filing an application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed; for a certificate of citizenship in a changed name under section 343(c) of the Act; or for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(b) of the Act: $345. There is no fee when this application is submitted under 8 CFR 338.5(a) or 343a.1 to request correction of a certificate that contains an error.

(AAA) *Application for Certificate of Citizenship (Form N–600).* For filing an application for a certificate of citizenship under section 309(c) or section 341 of the Act for applications filed on behalf of a biological child: $600. For applications filed on behalf of an adopted child: $550. There is no fee for any application filed by a member or veteran of any branch of the United States Armed Forces.

(BBB) *Application for Citizenship and Issuance of Certificate under section 322 of the Act (Form N–600K).* For filing an application for citizenship and issuance of certificate under section 322 of the Act: $600, for an application filed on behalf of a biological child, and $550 for an application filed on behalf of an adopted child.

(ii) *Other DHS immigration fees.* The following fees are applicable to one or more of the immigration components of DHS:

(A) DCL System Costs Fee. For use of a Dedicated Commuter Lane (DCL) located at specific ports-of-entry of the United States by an approved participant in a designated vehicle: $80.00, with the maximum amount of $160.00 payable by a family (husband, wife, and minor children under 18 years of age). Payable following approval of the application but before use of the DCL by each participant. This fee is non-refundable, but may be waived by DHS. If a participant wishes to enroll more than one vehicle for use in the PORTPASS system, he or she will be assessed with an additional fee of: $42 for each additional vehicle enrolled.

(B) *Form I–17.* For filing a petition for school certification: $1,700, plus a site visit fee of $655 for each location listed on the form.

(C) *Form I–68.* For application for issuance of the Canadian Border Boat Landing Permit under section 235 of the Act: $16.00. The maximum amount payable by a family (husband, wife, unmarried children under 21 years of age, and parents of either husband or wife) shall be $32.00.

(D) *Form I–94.* For issuance of Arrival/Departure Record at a land border port-of-entry: $6.00.

(E) *Form I–94W.* For issuance of Nonimmigrant Visa Waiver Arrival/Departure Form at a land border port-of-entry under section 217 of the Act: $6.00.

(F) *Form I–246.* For filing application for stay of deportation under 8 CFR part 243: $155.00.

(G) *Form I–823.* For application to a PORTPASS program under section 286 of the Act—$25.00, with the maximum amount of $50.00 payable by a family (husband, wife, and minor children under 18 years of age). The application fee may be waived by the district director. If fingerprints are required, the inspector will inform the applicant of the current Federal Bureau of Investigation fee for conducting fingerprint checks prior to accepting the application fee. Both the application fee (if not waived) and the fingerprint fee must be paid to CBP before the application will be processed. The fingerprint fee may not be waived. For replacement of PORTPASS documentation during the participation period: $25.00.

(H) *Form I–901.* For remittance of the I–901 SEVIS fee for F and M students: $200. For remittance of the I–901 SEVIS fee for certain J exchange visitors: $180. For remittance of the I–901 SEVIS fee for J–1 au pairs, camp counselors, and participants in a summer work/travel program: $35. There is no I–901 SEVIS fee remittance obligation for J exchange visitors in federally-funded programs with a program identifier designation prefix that begins with G–1, G–2, G–3 or G–7.

(I) *Special statistical tabulations*—a charge will be made to cover the cost of the work involved: DHS Cost.

(J) *Set of monthly, semiannual, or annual tables entitled* "*Passenger Travel Reports via Sea and Air*"*:* $7.00. Available from DHS, then the Immigration & Naturalization Service, for years 1975 and before. Later editions are available from the United States Department of Transportation, contact: United States Department of Transportation, Transportation Systems Center, Kendall Square, Cambridge, MA 02142.

(K) *Classification of a citizen of Canada to be engaged in business activities at a professional level pursuant to section 214(e) of the Act (Chapter 16 of the North American Free Trade Agreement):* $50.00.

(L) *Request for authorization for parole of an alien into the United States:* $65.00.

(2) *Fees for copies of records.* Fees for production or disclosure of records under 5 U.S.C. 552 shall be charged in accordance with the regulations of the Department of Homeland Security at 6 CFR 5.11.

(3) *Adjustment to fees.* The fees prescribed in paragraph (b)(1)(i) of this section may be adjusted annually by publication of an inflation adjustment. The inflation adjustment will be announced by a publication of a notice in the **Federal Register.** The adjustment shall be a composite of the Federal civilian pay raise assumption and non-pay inflation factor for that fiscal year issued by the Office of Management and Budget for agency use in implementing OMB Circular A–76, weighted by pay and non-pay proportions of total funding for that fiscal year. If Congress enacts a different Federal civilian pay raise percentage than the percentage issued by OMB for Circular A–76, the Department of Homeland Security may adjust the fees, during the current year or a following year to reflect the enacted level. The prescribed fee or charge shall be the amount prescribed in paragraph (b)(1)(i) of this section, plus the latest inflation adjustment, rounded to the nearest $5 increment.

(4) *Fees for immigration court and Board of Immigration Appeals.* Fees for proceedings before immigration judges and the Board of Immigration Appeals are provided in 8 CFR 1103.7.

(c) *Waiver of fees.* (1) *Eligibility for a fee waiver.* Discretionary waiver of the fees provided in paragraph (b)(1)(i) of this section are limited as follows:

(i) The party requesting the benefit is unable to pay the prescribed fee.

(ii) A waiver based on inability to pay is consistent with the status or benefit sought including requests that require demonstration of the applicant's ability to support himself or herself, or individuals who seek immigration status based on a substantial financial investment.

(2) *Requesting a fee waiver.* To request a fee waiver, a person requesting an immigration benefit must submit a written request for permission to have their request processed without payment of a fee with their benefit request. The request must state the person's belief that he or she is entitled to or deserving of the benefit requested, the reasons for his or her inability to pay, and evidence to support the reasons indicated. There is no appeal of the denial of a fee waiver request.

(3) *USCIS fees that may be waived.* No fee relating to any application, petition, appeal, motion, or request made to U.S. Citizenship and Immigration Services may be waived except for the following:

(i) Biometric Fee,

(ii) Application to Replace Permanent Resident Card,

(iii) Petition for a CNMI–Only Nonimmigrant Transitional Worker,

(iv) Application for Travel Document when filed to request humanitarian parole,

(v) Application for Advance Permission to Return to Unrelinquished Domicile,

(vi) Notice of Appeal or Motion, when there is no fee for the underlying application or petition or that fee may be waived,

(vii) Petition to Remove the Conditions of Residence based on marriage (Form I–751),

(viii) Application for Employment Authorization,

(ix) Application for Family Unity Benefits,

(x) Application for Temporary Protected Status,

(xi) Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Pub. L. 105–110),

(xii) Application to File Declaration of Intention, Request for a Hearing on a Decision in Naturalization Proceedings (under section 336 of the INA),

(xiii) Application for Naturalization,

(xiv) Application to Preserve Residence for Naturalization Purposes,

(xv) Application for Replacement Naturalization/Citizenship Document,

(xvi) Application for Certificate of Citizenship,

(xvii) Application for Citizenship and Issuance of Certificate under section 322 of this Act, and

(xviii) Any fees associated with the filing of any benefit request by a VAWA self-petitioner or under sections 101(a)(15)(T) (T visas), 101(a)(15)(U) (U visas), 106 (battered spouses of A, G, E–3, or H nonimmigrants), 240A(b)(2) (battered spouse or child of a lawful permanent resident or U.S. citizen), and 244(a)(3) (Temporary Protected Status), of the Act (as in effect on March 31, 1997).

(4) The following fees may be waived only for an alien for which a determination of their likelihood of becoming a public charge under section 212(a)(4) of the Act is not required at the time of an application for admission or adjustment of status.:

(i) Application for Advance Permission to Enter as Nonimmigrant;

(ii) Application for Waiver for Passport and/or Visa;

(iii) Application to Register Permanent Residence or Adjust Status;

(iv) Application for Waiver of Grounds of Inadmissibility.

(5) *Immigration Court fees.* The provisions relating to the authority of the immigration judges or the Board to waive fees prescribed in paragraph (b) of this section in cases under their jurisdiction can be found at 8 CFR 1003.8 and 1003.24.

(6) *Fees under the Freedom of Information Act (FOIA).* FOIA fees may be waived or reduced if DHS determines that such action would be in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(d) *Exceptions and exemptions.* The Director of USCIS may approve and suspend exemptions from any fee required by paragraph (b)(1)(i) of this section or provide that the fee may be waived for a case or specific class of cases that is not otherwise provided in this section, if the Director determines that such action would be in the public interest and the action is consistent with other applicable law. This discretionary authority will not be delegated to any official other than the USCIS Deputy Director.

(e) *Premium processing service.* A person submitting a request to USCIS may request 15 calendar day processing of certain employment-based immigration benefit requests.

(1) *Submitting a request for premium processing.* A request for premium processing must be submitted on the form prescribed by USCIS, including the required fee, and submitted to the address specified on the form instructions.

(2) *15-day limitation.* The 15 calendar day processing period begins when USCIS receives the request for premium processing accompanied by an eligible employment-based immigration benefit request.

(i) If USCIS cannot reach a final decision on a request for which premium processing was requested, as evidenced by an approval notice, denial notice, a notice of intent to deny, or a request for evidence, USCIS will refund the premium processing service fee, but continue to process the case.

(ii) USCIS may retain the premium processing fee and not reach a conclusion on the request within 15 days, and not notify the person who filed the request, if USCIS opens an investigation for fraud or misrepresentation relating to the benefit request.

(3) *Requests eligible for premium processing.*

(i) USCIS will designate the categories of employment-related benefit requests that are eligible for premium processing.

(ii) USCIS will announce by its official Internet Web site, currently http://www.uscis.gov, those requests for which premium processing may be requested, the dates upon which such availability commences and ends, and any conditions that may apply.

(f) *Authority to certify records.* The Director of USCIS, or such officials as he or she may designate, may certify records when authorized under 5 U.S.C. 552 or any other law to provide such records.

PART 204—IMMIGRANT PETITIONS

■ 4. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1184, 1186a, 1255, 1641; 8 CFR part 2.

■ 5. Section 204.6 is amended by revising paragraph (m)(6) to read as follows:

§ 204.6 Petitions for employment creation aliens.

* * * * *

(m) * * *

(6) *Termination of participation of regional centers.* To ensure that regional centers continue to meet the requirements of section 610(a) of the Appropriations Act, a regional center must provide USCIS with updated information to demonstrate the regional center is continuing to promote economic growth, improved regional productivity, job creation, or increased domestic capital investment in the approved geographic area. Such information must be submitted to USCIS on an annual basis, on a cumulative basis, and/or as otherwise requested by USCIS, using a form designated for this purpose. USCIS will issue a notice of intent to terminate the participation of a regional center in the pilot program if a regional center fails to submit the required information or upon a determination that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. The notice of intent to terminate shall be made upon notice to the regional center and shall set forth the reasons for termination. The regional center must be provided 30 days from receipt of the notice of intent to terminate to offer evidence in opposition to the ground or grounds alleged in the notice of intent to terminate. If USCIS determines that the regional center's participation in the Pilot Program should be terminated, USCIS shall notify the regional center of the decision and of the reasons for termination. As provided in 8 CFR 103.3, the regional center may appeal the decision to USCIS within 30 days after the service of notice.

* * * * *

PART 244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

■ 4. The authority citation for part 244 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note, 8 CFR part 2.

§ 244.20 [Removed]

■ 5. Section 244.20 is removed.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 6. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; Title VII of Public Law 110–229; 8 CFR part 2.

■ 7. Section 274a.12 is amended by revising paragraphs (a)(8) and (a)(11) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

(a) * * *

(8) An alien admitted to the United States as a nonimmigrant pursuant to the Compact of Free Association between the United States and of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau;

* * * * *

(11) An alien whose enforced departure from the United States has been deferred in accordance with a directive from the President of the United States to the Secretary.

Employment is authorized for the period of time and under the conditions established by the Secretary pursuant to the Presidential directive;

* * * * *

Janet Napolitano,

Secretary.

[FR Doc. 2010–23725 Filed 9–23–10; 8:45 am]

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Federal Register

Friday,

September 24, 2010

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–R9–MB–2010–0040; 91200–1231–9BPP–L2]

RIN 1018–AX06

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits for general waterfowl seasons and those early seasons for which States previously deferred selection. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule permits the taking of designated species during the 2010–11 season.

DATES: This rule is effective on September 25, 2010.

ADDRESSES: You may inspect comments received on the migratory bird hunting regulations during normal business hours at the Service's office in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, Virginia. You may inspect comments received on the migratory bird hunting regulations during normal business hours at the Service's office in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, VA. You may obtain copies of referenced reports from the street address above, or from the Division of Migratory Bird Management's Web site at *http://www.fws.gov/migratorybirds/,* or at *http://www.regulations.gov* at Docket No. FWS–R9–MB–2010–0040.

FOR FURTHER INFORMATION CONTACT: Robert Blohm, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2010

On May 13, 2010, we published in the **Federal Register** (75 FR 27144) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and addressed the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. Major steps in the 2010–11 regulatory cycle relating to open public meetings and **Federal Register** notifications were also identified in the May 13 proposed rule. Further, we explained that all sections of subsequent documents outlining hunting frameworks and guidelines were organized under numbered headings.

On June 10, 2010, we published in the **Federal Register** (75 FR 32872) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations. The June 10 supplement also provided detailed information on the 2010–11 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings.

On June 23 and 24, 2010, we held open meetings with the Flyway Council Consultants at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2010–11 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2010–11 regular waterfowl seasons. On July 29, 2010, we published in the **Federal Register** (75 FR 44856) a third document specifically dealing with the proposed frameworks for early-season regulations. On August 30, 2010, we published in the **Federal Register** (75 FR 52873) a final rule which contained final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits. Subsequently, on August 31, 2010, we published a final rule in the **Federal Register** (75 FR 53226) amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons.

On July 28–29, 2010, we held open meetings with the Flyway Council Consultants at which the participants reviewed the status of waterfowl and developed recommendations for the 2010–11 regulations for these species. On August 25, 2010, we published in the **Federal Register** (75 FR 52398) the proposed frameworks for the 2010–11 late-season migratory bird hunting regulations. We published final late-season frameworks for migratory game bird hunting regulations, from which State wildlife conservation agency officials selected late-season hunting dates, hours, areas, and limits for 2010–11, in a late September 2010, **Federal Register**.

The final rule described here is the final in the series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations for 2010–11 and deals specifically with amending subpart K of 50 CFR part 20. It sets hunting seasons, hours, areas, and limits for species subject to late-season regulations and those for early seasons that States previously deferred.

National Environmental Policy Act (NEPA) Consideration

NEPA considerations are covered by the programmatic document "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published a notice of availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our record of decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available by writing to the address indicated under the caption **ADDRESSES**.

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement (SEIS) for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as detailed in a March 9, 2006, **Federal Register** (71 FR 12216). We released the draft SEIS on July 9, 2010 (75 FR 39577). The draft SEIS is available by either writing to the address indicated under *ADDRESSES* or by viewing our website at *http://www.fws.gov/migratorybirds.*

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. * * *." Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to jeopardize the continued existence of any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

Executive Order 12866

The Office of Management and Budget has determined that this rule is significant and has reviewed this rule under Executive Order 12866. OMB bases its determination of regulatory significance upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

An economic analysis was prepared for the 2008–09 season. This analysis was based on data from the 2006 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) Issue restrictive regulations allowing fewer days than those issued during the 2007–08 season, (2) Issue moderate regulations allowing more days than those in alternative 1, and (3) Issue liberal regulations identical to the regulations in the 2007–08 season. For the 2008–09 season, we chose alternative 3, with an estimated consumer surplus across all flyways of $205–$270 million. Based on population status information, there were no significant changes to the season frameworks for the 2010–11 season, and as such, we again considered these three alternatives. For these reasons, we have not conducted a new economic analysis, but the 2008–09 analysis is part of the record for this rule and is available at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs or at http://www.regulations.gov* at Docket No. FWS–R9–MB–2010–0040.

Regulatory Flexibility Act

The regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, and 2008. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2008 Analysis was based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.2 billion at small businesses in 2008. Copies of the Analysis are available upon request from the Division of Migratory Bird Management (see **ADDRESSES**) or from our Web site at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs or at http://www.regulations.gov* at Docket No. FWS–R9–MB–2010–0040.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of our Migratory Bird Surveys and assigned control number 1018–0023 (expires 2/28/2011). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations.

A Federal agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in the May 13 **Federal Register**, we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2010–11 migratory bird hunting season. The resulting proposals were contained in an August 6, 2010, proposed rule (75 FR 47682). By virtue of these actions, we have consulted with Tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Indian Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We find that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 703–711), these regulations will take effect immediately upon publication. Accordingly, with each conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State or Territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: September 16, 2010.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

■ For the reasons set out in the preamble, title 50, chapter I, subchapter B, part 20, subpart K of the Code of Federal Regulations is amended as follows:

PART 20 — [AMENDED]

■ 1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a–j; Pub. L. 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

BILLING CODE 4310–55–P

Note - The following annual regulations provided for by §§20.104, 20.105, 20.106, 20.107, and 20.109 of 50 CFR part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

2. Section 20.104 is amended by adding the entries for the following States in alphabetical order to read as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 25, 2010 (75 FR 52398) and August 31, 2010 (75 FR 52873), Federal Registers.

NOTE: The following seasons are in addition to the seasons published previously in the August 31, 2010, Federal Register (75 FR 53226).

	Sora & Virginia Rails	Clapper & King Rails	Woodcock	Common Snipe
Daily bag limit	25 (1)	15 (2)	3	8
Possession limit	25 (1)	30 (2)	6	16

ATLANTIC FLYWAY

* * * * *

Massachusetts (5)	Sept. 1-Nov. 9	Closed	Oct. 14-Oct. 30 & Nov. 1-Nov. 13	Sept. 1-Dec. 16

* * * * *

Vermont	Closed	Closed	Oct. 9-Nov. 5 & Nov. 8-Nov. 9	Oct. 6-Dec. 16

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MISSISSIPPI FLYWAY

* * * * *

Louisiana	Sept. 11-Sept. 26 & Nov. 13-Jan. 5	Sept. 11-Sept. 26 & Nov. 13-Jan. 5	Dec. 18-Jan. 31	Nov. 6-Dec. 10 Dec. 18-Feb. 27

* * * * *

Tennessee				
Reelfoot Zone	Nov. 13-Nov. 14 & Dec. 4-Jan. 30	Closed	Oct. 30-Dec. 13	Nov. 14-Feb. 28

	Sora & Virginia Rails	Clapper & King Rails	Woodcock	Common Snipe
Tennessee (cont.)				
State Zone	Nov. 27-Nov. 28 & Dec. 4-Jan. 30	Closed	Oct. 30-Dec. 13	Nov. 14-Feb. 28
Wisconsin				
North Zone	Sept. 25-Nov. 23	Closed	Sept. 25-Nov. 8	Sept. 25-Nov. 23
South Zone	Oct. 2-Oct. 10 & Oct. 16-Dec. 5	Closed	Sept. 25-Nov. 8	Oct. 2-Oct. 10 & Oct. 16-Dec. 5
CENTRAL FLYWAY				
* * * * *				
Nebraska (16)	Sept. 1-Nov. 9	Closed	Sept. 25-Nov. 8	Sept. 1-Dec. 16
* * * * *				
PACIFIC FLYWAY				
Arizona (18)				
North Zone	Closed	Closed	Closed	Oct. 8-Jan. 16
South Zone	Closed	Closed	Closed	Oct. 22-Jan. 30
* * * * *				
Idaho				
Zone 1 & 2	Closed	Closed	Closed	Oct. 2-Jan. 14
Zones 3	Closed	Closed	Closed	Oct. 9-Jan. 21
* * * * *				
Nevada				
Lincoln and Clark Counties	Closed	Closed	Closed	Oct. 16-Jan. 28
Rest of State	Closed	Closed	Closed	Oct. 16-Jan. 29
* * * * *				
Oregon				
Zone 1	Closed	Closed	Closed	Oct. 16-Oct. 24 & Oct. 27-Jan. 30
Zone 2	Closed	Closed	Closed	Oct. 9-Nov. 28 & Dec. 1-Jan. 23

* * * * *

	Sora & Virginia Rails	Clapper & King Rails	Woodcock	Common Snipe
Washington				
East Zone	Closed	Closed	Closed	Oct. 16-Oct. 20 & Oct. 23-Jan. 30
West Zone	Closed	Closed	Closed	Oct. 16-Oct. 20 & Oct. 23-Jan. 30
		* * * * *		

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.
(2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States. In Delaware, the limits for clapper and king rails are 10 daily and 20 in possession. In Connecticut and Maryland, the limits for clapper and king rails are 10 daily and 10 in possession.

* * * * *

(5) In Massachusetts, the sora rail limits are 5 daily and 5 in possession; the Virginia rail limits are 10 daily and 10 in possession.

* * * * *

(16) In Nebraska and New Mexico, the rail limits are 10 daily and 20 in possession.

* * * * *

(18) In Arizona, Ashurst Lake in Unit 5B is closed to common snipe hunting.

3. In § 20.105, paragraphs (a), (b), and (f) are amended by adding the entries for the following States in alphabetical order and paragraph (e) is revised to read as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations.

Area descriptions were published in the August 25, 2010 (75 FR 52398) and August 31, 2010 (75 FR 52873), Federal Registers.

(a) Common Moorhens and Purple Gallinules
(Atlantic, Mississippi, and Central Flyways)

NOTE: The following seasons are in addition to the seasons published previously in the August 31, 2010 Federal Register (75 FR 53226). The zones named in this paragraph are the same as those used for setting duck seasons.

	Season Dates	Limits Bag	Limits Possession
ATLANTIC FLYWAY			
	* * * * *		
Georgia	Nov. 20-Nov. 28 &	15	30
	Dec. 11-Jan. 30		
	* * * * *		
Virginia	Oct. 7-Oct. 11 &	15	30
	Nov. 20-Dec. 4 &	15	30
	Dec. 11-Jan. 29	15	30
West Virginia			
Zone 1	Oct. 1-Oct. 9 &	15	30
	Dec. 10-Jan. 29	15	30
Zone 2	Oct. 1-Oct. 9 &	15	30
	Dec. 3-Jan. 22	15	30
	* * * * *		
MISSISSIPPI FLYWAY			
	* * * * *		
Louisiana	Sept. 11-Sept. 26 &	15	30
	Nov. 13-Jan. 5	15	30
Michigan			
North Zone	Oct. 2-Nov. 30	1	2
Middle Zone	Oct. 2-Nov. 28 &	1	2
	Dec. 4-Dec. 5	1	2
South Zone	Oct. 9-Dec. 5 &	1	2
	Jan. 1-Jan. 2	1	2
Minnesota (3)	Oct. 2-Nov. 30	15	30
	* * * * *		
Tennessee			
Reelfoot Zone	Nov. 13-Nov. 14 &	15	30
	Dec. 4-Jan. 30	15	30
State Zone	Nov. 27-Nov. 28 &	15	30
	Dec. 4-Jan. 30	15	30
Wisconsin			
North Zone	Sept. 25-Nov. 23	15	30
South Zone	Oct. 2-Oct. 10 &	15	30
	Oct. 16-Dec. 5		

* * * * *

	Season Dates	Limits Bag	Limits Possession
PACIFIC FLYWAY			
All States	Seasons are in aggregate with coots and listed in paragraph (e).		

* * * * *

(3) In Minnesota, the daily bag limit is 15 and the possession limit is 30 coots and moorhens in the aggregate.

(b) Sea Ducks (scoter, eider, and long-tailed ducks in Atlantic Flyway)

NOTE: The following seasons are in addition to the seasons published previously in the August 31, 2010 Federal Register (75 FR 53226).

Within the special sea duck areas, the daily bag limit is 7 scoter, eider, and long-tailed ducks of which no more than 4 may be scoters. Possession limits are twice the daily bag limit. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

	Season Dates	Limits Bag	Limits Possession
Georgia	Nov. 20-Nov. 28 &	7	14
	Dec. 11-Jan. 30	7	14
	* * * * *		
Maryland	Oct. 2-Jan. 29	5	10
Massachusetts (4)	Oct. 9-Jan. 29	7	14
	* * * * *		
North Carolina	Oct. 1-Jan. 31	7	14
	* * * * *		
South Carolina	Oct. 16-Jan. 30	7	14
Virginia	Oct. 7-Jan. 31	7	14

Note: Notwithstanding the provisions of this part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia, and Maryland in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

* * * * *

(4) In Massachusetts, the daily bag limit may include no more than 4 eiders (only 1 of which may be a hen) and 4 long-tailed ducks.

* * * * *

(e) Waterfowl, Coots, and Pacific-Flyway Seasons for Common Moorhens and Purple Gallinules

Definitions

The Atlantic Flyway: Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

The Mississippi Flyway: Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

The Central Flyway: Includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

The Pacific Flyway: Includes the States of Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Light Geese: Includes lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Dark Geese: Includes Canada geese, white-fronted geese, emperor geese, brant (except in California, Oregon, Washington, and the Atlantic Flyway), and all other geese except light geese.

ATLANTIC FLYWAY

Flyway-wide Restrictions

Duck Limits: The daily bag limit of 6 ducks may include no more than 4 mallards (2 hen mallards), 2 scaup, 1 black duck, 2 pintails, 1 canvasback, 1 mottled duck, 3 wood ducks, 2 redheads, and 1 fulvous tree duck. The possession limit is twice the daily bag limit.

Harlequin Ducks: All areas of the Flyway are closed to harlequin duck hunting.

Merganser Limits: The daily bag limit is 5 mergansers with 10 in possession and may include no more than 2 hooded mergansers daily and 4 in possession. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which only 2 daily and 4 in possession may be hooded mergansers.

	Season Dates	Limits: Bag	Limits: Possession
Connecticut			
Ducks and Mergansers:		6	12
North Zone	Oct. 15-Oct. 26 & Nov. 11-Jan. 7		
South Zone	Oct. 15-Oct. 20 & Nov. 20-Jan. 22		
Coots	Same as for Ducks	15	30
Canada Geese:			
AFRP Unit	Oct. 15-Oct. 26 &	5	10
	Nov. 22-Nov. 27 &	5	10
	Dec. 1-Feb. 11	5	10

	Season Dates	Limits Bag	Limits Possession
Connecticut (cont.)			
NAP H-Unit	Oct. 1-Oct. 16 &	2	4
	Nov. 24-Jan. 15	2	4
AP Unit	Nov. 1-Nov. 6 &	3	6
	Nov. 25-Jan. 8	3	6
South Zone (special season)	Jan. 17-Feb. 11	5	10
Light Geese:			
North Zone	Oct. 1-Jan. 15 &	25	--
	Feb. 20-Mar. 10	25	--
South Zone	Oct. 1-Nov. 30 &	25	--
	Jan. 6-Mar. 10	25	--
Brant:			
North Zone	Nov. 11-Jan. 7	2	4
South Zone	Nov. 26-Jan. 22	2	4
Delaware			
Ducks	Oct. 22-Nov. 2 &	6	12
	Nov. 22-Dec. 4 &		
	Dec. 17-Jan. 29		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese	Nov. 22-Dec. 4 &	2	4
	Dec. 23-Jan. 29	2	4
Light Geese (1)	Oct. 1-Jan. 31	25	--
Brant	Dec. 3-Jan. 29	2	4
Florida			
Ducks	Nov. 20-Nov. 28 &	6	12
	Dec. 11-Jan. 30		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese	Nov. 20-Nov. 28 &	5	10
	Dec. 1-Jan. 30	5	10
Light Geese	Same as for Ducks	15	--
Georgia			
Ducks	Nov. 20-Nov. 28 &	6	12
	Dec. 11-Jan. 30		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese (special season)	Same as for Ducks	5	10
Light Geese	Same as for Ducks	5	10
Brant	Closed	--	--
Maine			
Ducks (2):		6	12
North Zone	Sept. 27-Dec. 4		
South Zone	Oct. 1-Oct. 23 &		
	Nov. 10-Dec. 25		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	5	10

	Season Dates	Limits Bag	Limits Possession
Maine (cont.)			
Canada Geese:			
North Zone	Oct. 1-Dec. 9	2	4
South Zone	Same as for Ducks	2	4
Light Geese	Oct. 1-Jan. 31	25	--
Brant:			
North Zone	Oct. 1-Nov. 27	2	4
South Zone	Oct. 1-Oct. 23 &	2	4
	Nov. 10-Dec. 14	2	4
Maryland			
Ducks and Mergansers (3)	Oct. 16-Oct. 23 &	6	12
	Nov. 13-Nov. 26 &		
	Dec. 14-Jan. 29		
Coots	Same as for Ducks	15	30
Canada Geese:			
RP Zone	Nov. 15-Nov. 26 &	5	10
	Dec. 16-Mar. 5	5	10
AP Zone	Nov. 20-Nov. 26 &	2	4
	Dec. 16-Jan. 29	2	4
Light Geese	Oct. 9-Nov. 26 &	25	--
	Nov. 29-Jan. 29	25	--
Brant	Nov. 20-Nov. 26 &	2	4
	Dec. 10-Jan. 29	2	4
Massachusetts			
Ducks (4):		6	12
Western Zone	Oct. 13-Nov. 27 &		
	Dec. 10-Jan. 1		
Central Zone	Oct. 14-Nov. 27 &		
	Dec. 16-Jan. 8		
Coastal Zone	Oct. 15-Oct. 23 &		
	Nov. 18-Jan. 17		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese:			
NAP Zone			
Central Zone:	Oct. 14-Nov. 27 &	2	4
	Dec. 16-Jan. 8	2	4
(special season)	Jan. 15-Feb. 15	5	10
Coastal Zone:	Oct. 15-Oct. 23 &	2	4
	Nov. 18-Jan. 17	2	4
(special season) (5)	Jan. 18-Feb. 15	5	10
AP Zone	Oct. 20-Nov. 27 &	3	6
	Dec. 10-Dec. 22	3	6
Light Geese:			
Western Zone	Same as for Ducks	15	30
Central Zone	Same as for Ducks &	15	30
	Jan. 15-Feb. 15	15	30
Coastal Zone	Same as for Ducks &	15	30
	Jan. 18-Feb. 15	15	30

	Season Dates	Limits Bag	Possession
Massachusetts (cont.)			
Brant:			
Western & Central Zone	Closed	--	--
Coastal Zone	Nov. 18-Nov. 27 &	2	4
	Dec. 14-Jan. 29	2	4
New Hampshire			
Ducks:		6	12
Inland Zone	Oct. 5-Nov. 7 &		
	Nov. 24-Dec. 19		
Coastal Zone	Oct. 6-Oct. 17 &		
	Nov. 24-Jan. 10		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese:			
Inland Zone	Same as for Ducks	2	4
Coastal Zone	Same as for Ducks	2	4
Light Geese:			
Inland Zone	Oct. 5-Dec. 19	25	--
Coastal Zone	Oct. 6-Jan. 10	25	-
Brant:			
Inland Zone	Oct. 5-Nov. 23	2	4
Coastal Zone	Oct. 6-Nov. 24	2	4
New Jersey			
Ducks:		6	12
North Zone	Oct. 9-Oct. 28 &		
	Nov. 13-Jan. 1		
South Zone	Oct. 16-Oct. 30 &		
	Nov. 13-Jan. 6		
Coastal Zone	Nov. 6-Nov. 13 &		
	Nov. 25-Jan. 25		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	15
Canada and White-fronted Geese:			
North Zone	Nov. 13-Nov. 27 &	3	6
	Dec. 11-Jan. 17	3	6
South Zone	Same as North Zone	3	6
Coastal Zone	Nov. 25-Dec. 4 &	3	6
	Dec. 7-Jan. 17	3	6
(special season)	Jan. 18-Feb. 15	5	10
Light Geese:			
North Zone	Oct. 14-Feb. 15	25	--
South Zone	Oct. 14-Feb. 15	25	--
Coastal Zone	Oct. 14-Feb. 15	25	--
Brant:			
North Zone	Oct. 9-Oct. 28 &	2	4
	Nov. 25-Jan. 1	2	4
South Zone	Oct. 16-Oct. 30 &	2	4
	Nov. 25-Jan. 6	2	4
Coastal Zone	Nov. 6-Nov. 13 &	2	4
	Nov. 25-Jan. 13	2	4

	Season Dates	Limits Bag	Limits Possession
New York			
Ducks and Mergansers:		6	12
Long Island Zone	Nov. 24-Nov. 28 &		
	Dec. 7-Jan. 30		
Lake Champlain Zone	Oct. 6-Oct. 10 &		
	Oct. 23-Dec. 16		
Northeastern Zone	Oct. 2-Oct. 11 &		
	Oct. 23-Dec. 11		
Southeastern Zone	Oct. 9-Oct. 17 &		
	Nov. 6-Dec. 26		
Western Zone	Oct. 23-Dec. 6 &		
	Dec. 26-Jan. 9		
Coots	Same as for Ducks	15	30
Canada Geese:			
Western Long Island (AFRP)	Nov. 24-Mar. 8	8	16
Central Long Island (NAP-L)	Nov. 24-Nov. 28 &	3	6
	Dec. 7-Feb. 9	3	6
Eastern Long Island (NAP-H)	Nov. 24-Nov. 28 &	2	4
	Dec. 7-Jan. 30	2	4
Lake Champlain (AP) Zone	Oct. 20-Dec. 3	3	6
Northeast (AP) Zone	Oct. 23-Dec. 6	3	6
East Central (AP) Zone	Oct. 23-Nov. 19 &	3	6
	Nov. 27-Dec. 13	3	6
Hudson Valley (AP) Zone	Oct. 23-Nov. 19 &	3	6
	Dec. 18-Jan. 3	3	6
West Central (AP) Zone	Oct. 23-Nov. 21 &	3	6
	Dec. 26-Jan. 9	3	6
South (RP)	Oct. 23-Dec. 13 &	5	10
	Dec. 26-Jan. 9 &	5	10
	Feb. 26-Mar. 10	5	10
(Special season)	Feb. 10-Feb. 15	5	10
Light Geese (6):			
Long Island Zone	Nov. 24-Mar. 10	25	--
Lake Champlain Zone	Oct. 1-Dec. 29	25	--
Northeastern Zone	Oct. 1-Dec. 31 &	25	--
	Feb. 24-Mar. 10	25	-
Southeastern Zone	Oct. 2-Jan. 6 &	25	--
	Mar. 1-Mar. 10	25	--
Western Zone	Oct. 23-Dec. 13 &	25	--
	Dec. 26-Jan. 9 &	25	--
	Jan. 30-Mar. 10	25	--
Brant:			
Long Island Zone	Nov. 24-Nov. 28 &	2	4
	Dec. 17-Jan. 30	2	4
Lake Champlain Zone	Oct. 6-Oct. 10 &	2	4
	Oct. 20-Dec. 3	2	4
Northeastern Zone	Oct. 2-Nov. 20	2	4
Southeastern Zone	Oct. 9-Nov. 27	2	4
Western Zone	Oct. 2-Nov. 20	2	4

	Season Dates	Limits Bag	Limits Possession
North Carolina			
Ducks (7)	Oct. 6-Oct. 9 &	6	12
	Nov. 13-Dec. 4 &		
	Dec. 18-Jan. 29		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese:			
Resident Population Hunt Zone	Oct. 6-Oct. 16 &	5	10
	Nov. 13-Dec. 4 &	5	10
	Dec. 18-Feb. 5	5	10
Southern James Bay Hunt Zone	Oct. 6-Nov. 6 &	5	10
	Nov. 13-Dec. 31	5	10
Northeast Hunt Zone (8)	Jan. 22-Jan. 29	1	2
Light Geese (9)	Oct. 16-Oct. 23 &	25	--
	Nov. 13-Mar. 9	25	--
Brant	Nov. 20-Dec. 4 &	2	4
	Dec. 18-Jan. 29	2	4
Pennsylvania			
Ducks:		6	12
North Zone	Oct. 9-Oct. 23 &		
	Nov. 11-Jan. 4		
South Zone	Oct. 9-Oct. 16 &		
	Nov. 17-Jan. 17		
Northwest Zone	Oct. 9-Oct. 23 &		
	Nov. 6-Dec. 30		
Lake Erie Zone	Oct. 25-Jan. 1		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese:			
AP Zone	Nov. 17-Nov. 27 &	3	6
	Dec. 21-Jan. 29	3	6
SJBP Zone	Oct. 23-Nov. 27 &	3	6
	Dec. 13-Jan. 26	3	6
Resident (RP) Zone	Oct. 23-Oct. 30 &	5	10
	Nov. 8-Nov. 27 &	5	10
	Dec. 18-Feb. 19	5	10
Light Geese	Nov. 6-Feb. 19	25	--
Brant	Oct. 9-Dec. 6	2	4
Rhode Island			
Ducks	Oct. 8-Oct. 11 &	6	12
	Nov. 24-Nov. 28 &		
	Dec. 4-Jan. 23		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese	Nov. 20-Nov. 28 &	2	4
	Dec. 4-Jan. 23	2	4
(special season)	Jan. 28-Feb. 13	5	10
Light Geese	Oct. 9-Jan. 23	15	--
Brant	Dec. 5-Jan. 23	2	4

	Season Dates	Limits Bag	Limits Possession
South Carolina			
Ducks (10)(11)	Nov. 20-Nov. 27 &	6	12
	Dec. 4 only &		
	Dec. 11-Jan. 30		
Mergansers (12)	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada and White-fronted Geese (13)	Nov. 20-Nov. 27 &	5	10
	Dec. 4-Feb. 4 &	5	10
	Feb. 7-Feb. 10	5	10
Light Geese	Same as for Ducks	25	--
Brant	Dec. 12-Jan. 30	2	4
Vermont			
Ducks:		6	12
Lake Champlain Zone	Oct. 6-Oct 10 &		
	Oct. 23-Dec. 16		
Interior Zone	Oct. 6-Dec. 4		
Connecticut River Zone	Oct. 5-Nov. 7 &		
	Nov. 24-Dec. 19		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese			
Lake Champlain Zone:	Oct. 20-Dec. 3	3	6
Interior Zone:	Oct. 20-Dec. 3	3	6
Connecticut River Zone	Oct. 5-Nov. 7 &	2	4
	Nov. 24-Dec. 19	2	4
Light Geese			
Lake Champlain Zone	Oct. 1-Dec. 29	25	-
Interior Zone	Oct. 1-Dec. 29	25	-
Connecticut River Zone	Oct. 5-Dec. 19	25	-
Brant			
Lake Champlain Zone	Oct. 6-Oct. 10 &	2	4
	Oct. 20-Dec. 3	2	4
Interior Zone	Oct. 6-Nov. 24	2	4
Connecticut River Zone	Oct. 5-Nov. 23	2	4
Virginia			
Ducks (14):	Oct. 7-Oct. 11 &	6	12
	Nov. 20-Dec. 4 &		
	Dec. 11-Jan. 29		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese:			
Eastern (AP) Zone	Nov. 20-Dec. 4 &	2	4
	Dec. 24-Jan. 29	2	4
Western (SJBP) Zone	Nov. 20-Dec. 4 &	3	6
	Dec. 15-Jan. 14 &	3	6
	Jan. 15-Feb. 15	5	10
Western (RP) Zone	Nov. 20-Dec. 4 &	5	10
	Dec. 11-Feb. 26	5	10
Light Geese	Oct. 7-Jan. 31	25	--
Brant	Nov. 20-Nov. 27 &	2	4
	Dec. 11-Jan. 29	2	4

	Season Dates	Limits Bag	Limits Possession
West Virginia			
Ducks (15):		6	12
Zone 1	Oct. 1-Oct. 9 & Dec. 10-Jan. 29		
Zone 2	Oct. 1-Oct. 9 & Dec. 3-Jan. 22		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese:			
Zone 1	Oct. 1-Oct. 30 &	5	10
	Dec. 13-Jan. 31	5	10
Zone 2	Oct. 1-Oct. 30 &	5	10
	Dec. 13-Jan. 31	5	10
Light Geese:			
Zone 1	Same as for Canada geese	5	10
Zone 2	Same as for Canada geese	5	10
Brant			
Zone 1	Dec. 13-Jan. 31	2	4
Zone 2	Dec. 13-Jan. 31	2	4

(1) In Delaware, the Bombay Hook NWR snow goose season is open Mondays, Wednesdays, and Fridays only.

(2) In Maine, the daily bag limit may include no more than 4 of any species, with no more than 8 of any one species in possession. The season for Barrow's goldeneye is closed.

(3) In Maryland, the black duck season is closed October 16 through October 23.

(4) In Massachusetts, the daily bag limit may include no more than 4 of any single species in addition to the flyway-wide bag restrictions.

(5) In Massachusetts, the special season in the Coastal Zone is restricted to that portion of the Coastal Zone north of the Cape Cod Canal.

(6) In New York, light geese may be taken with the aid of recorded or electrically amplified calls in any area or zone when all other waterfowl seasons are closed.

(7) In North Carolina, the season is closed for black ducks October 6 through October 9 and November 13 through November 30. The daily bag limit for black and mottled ducks are combined with no more than 1 allowed in the daily bag.

(8) In North Carolina, a permit is required to hunt Canada geese in the Northeast Hunt Zone.

(9) In North Carolina, electronic calls and unplugged shotguns are allowed for light geese from February 7 through March 9.

(10) In South Carolina, the daily bag limit of 6 may not exceed 1 black-bellied whistling duck, and 1 black duck or 1 mottled duck in the aggregate.

(11) In South Carolina, on December 4, 2010, only youth less than 18 years of age may hunt, but they must be accompanied by an adult of at least 21 years of age who is fully licensed, including a Federal Waterfowl Stamp, State waterfowl stamp, and HIP permit. Youth who are 16 and 17 years of age, who hunt, must possess a Federal Waterfowl Stamp and HIP permit.

(12) In South Carolina, the daily bag limit for mergansers may include no more than 1 hooded merganser.

(13) In South Carolina, the daily bag limit may include no more than 2 white-fronted geese.

(14) In Virginia, the season is closed for black ducks October 7 through October 11.

(15) In West Virginia, the daily bag limit may include no more than 4 long-tailed ducks and the season is closed for eiders, whistling ducks, and mottled ducks.

MISSISSIPPI FLYWAY

Flyway-wide Restrictions

Duck Limits: The daily bag limit of 6 ducks may include no more than 4 mallards (no more than 2 of which may be females), 1 mottled duck, 1 black duck, 2 pintails, 1 canvasback, 2 redheads, 2 scaup, and 3 wood ducks. The possession limit is twice the daily bag limit.

Merganser Limits: The merganser limits include no more than 2 hooded mergansers daily and 4 in possession. In states that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which only 2 daily and 4 in possession may be hooded mergansers.

	Season Dates	Limits Bag	Limits Possession
Alabama			
Ducks:		6	12
North Zone	Nov. 26-Nov. 27 &		
	Dec. 4-Jan. 30		
South Zone	Same as North Zone		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese:			
Dark Geese:			
North Zone:			
SJBP Zone	Sept. 25-Oct. 6 &	2	4
	Dec. 4-Jan. 30	2	4
Rest of North Zone	Same as SJBP Zone	2	4
South Zone	Same as Rest of North Zone	2	4
Light Geese:			
North Zone:			
SJBP Zone	Same as Rest of North Zone	5	5
Monroe and Escambia Counties	Sept. 25-Oct. 6 &	5	5
	Oct. 30-Nov. 14 &	5	10
	Dec. 4-Jan. 30	5	5
Rest of North Zone	Same as for Dark Geese	5	5
South Zone	Same as for Dark Geese	5	5
Arkansas			
Ducks	Nov. 20-Nov. 28 &	6	12
	Dec. 7-Jan. 17 &		
	Jan. 22-Jan. 30		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese:			
Canada:			
Northwest Zone	Sept. 25-Oct. 4 &	2	4
	Nov. 20-Jan. 30	2	4
Remainder of State	Nov. 20-Jan. 30	2	4
White-fronted	Nov. 20-Jan. 30	2	4
Brant	Closed	--	--
Light Geese	Nov. 6-Jan. 30	20	–

	Season Dates	Limits Bag	Limits Possession
Illinois			
Ducks:		6	12
North Zone	Oct. 16-Dec. 14		
Central Zone	Oct. 30-Dec. 28		
South Zone	Nov. 25-Jan. 23		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese:			
Canada:			
North Zone	Oct. 16-Jan. 8	2	4
Central Zone	Oct. 30-Nov. 14 &	2	4
	Nov. 24-Jan. 31	2	4
South Zone	Nov. 25-Nov. 28 &	2	4
	Dec. 1-Jan. 31	2	4
White-fronted:			
North Zone	Oct. 29-Jan. 8	2	4
Central Zone	Nov. 21-Jan. 31	2	4
South Zone	Nov. 25-Jan. 31	2	4
Brant	Same as for Light Geese	1	2
Light Geese			
North Zone	Oct. 16-Jan. 8	20	--
Central Zone	Oct. 30-Jan. 31	20	-
South Zone	Nov. 25-Jan. 31	20	-
Indiana			
Ducks:		6	12
North Zone	Oct. 16-Dec. 14		
South Zone	Oct. 23-Oct. 31 &		
	Nov. 24-Jan. 13		
Ohio River Zone	Oct. 30-Oct. 31 &		
	Nov. 27-Jan. 23		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese:			
Canada:			
North Zone	Oct. 16-Oct. 17 &	2	4
	Nov. 6-Jan. 16	2	4
South Zone	Oct. 23-Oct. 31 &	2	4
	Nov. 24-Jan. 27	2	4
Ohio River Zone	Oct. 30-Oct. 31 &	2	4
	Nov. 21-Jan. 31	2	4
Late Season Zone	Feb. 1-Feb. 15	5	10
White-fronted	Nov. 6-Jan. 30	1	2
Brant	Oct. 16-Jan. 28	1	2
Light Geese	Oct. 16-Jan. 28	20	-
Iowa			
Ducks:		6	12
North Duck Zone	Sept. 18-Sept. 22 &		
	Oct. 16-Dec. 9		
South Duck Zone	Sept. 18-Sept. 22 &		
	Oct. 23-Dec. 16		

	Season Dates	Limits Bag	Limits Possession
Iowa (cont.)			
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese:			
Canada:			
North Goose Zone	Sept. 25-Oct. 10 &	2	4
	Oct. 16-Oct. 31 &	2	4
	Nov. 1-Jan. 5	3	6
South Goose Zone	Oct. 2-Oct. 17 &	2	4
	Oct. 23-Oct. 31 &	2	4
	Nov. 1-Jan. 12	3	6
White-fronted:			
North Goose Zone	Sept. 25-Dec. 5	2	4
South Goose Zone	Oct. 2-Dec. 12	2	4
Brant:			
North Goose Zone	Same as for Canada geese	1	2
South Goose Zone	Same as for Canada geese	1	2
Light Geese:			
North Zone	Sept. 25-Jan. 9	20	--
South Goose Zone	Oct. 2-Jan. 14	20	--
Kentucky			
Ducks:		6	12
West Zone	Nov. 25-Nov. 28 & Dec. 6-Jan. 30		
East Zone	Same as for West Zone		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada:			
Western Goose Zone:			
Fulton County	Nov. 23-Jan. 31	2	4
Rest of Zone	Nov. 23-Jan. 31	2	4
Pennyroyal/Coalfield Zone	Nov. 23-Jan. 31	2	4
Rest of State	Nov. 23-Jan. 31	2	4
White-fronted	Nov. 23-Jan. 31	2	4
Brant	Nov. 23-Jan. 31	2	4
Light Geese			
Western Goose Zone:			
Fulton County	Nov. 23-Jan. 31	20	-
Rest of Zone:	Nov. 23-Jan. 31	20	-
Rest of State	Nov. 23-Jan. 31	20	-
Louisiana			
Ducks:		6	12
West Zone	Nov. 13-Dec. 5 & Dec. 18-Jan. 23		
East Zone (including Catahoula Lake)	Nov. 20-Dec. 5 & Dec. 18-Jan. 30		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese:			
Canada (1)	Dec. 18-Jan. 30	1	2

	Season Dates	Limits Bag	Limits Possession
Louisiana (cont.)			
White-fronted (1):			
West Zone	Nov. 13-Dec. 5 &	2	4
	Dec. 18-Feb. 4	2	4
East Zone	Nov. 8-Dec. 5 &	2	4
	Dec. 18-Jan. 30	2	4
Brant	Closed	–	--
Light Geese	Same as for White-fronted	20	--
Michigan			
Ducks (2):		6	12
North Zone	Oct. 2-Nov. 30 &		
Middle Zone	Oct. 2-Nov. 28 &		
	Dec. 4-Dec. 5		
South Zone	Oct. 9-Dec. 5 &		
	Jan. 1-Jan. 2		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese:			
Canada :			
North Zone	Sept. 16-Oct. 30	2	4
Middle Zone	Oct. 2-Nov. 8 &	2	4
	Nov. 25-Dec. 1	2	4
South Zone:			
Muskegon Wastewater GMU	Oct. 14-Nov. 14 &	2	4
	Dec. 2-Dec. 14	2	4
Allegan County GMU	Dec. 4-Dec. 23 &	2	4
	Dec. 30-Jan. 23	2	4
Saginaw County GMU	Oct. 9-Nov. 14 &	2	4
	Dec. 4-Dec. 11 &	2	4
	Jan. 1-Jan. 30	2	4
Tuscola/Huron GMU	Same as Saginaw County GMU	2	4
Remainder of South Zone	Oct. 9-Nov. 14 &	2	4
	Dec. 4-Dec. 11 &	2	4
	Jan. 1-Jan. 30	5	10
White-fronted and Brant	Same as for Canada geese	1	2
Light Geese	Same as for Canada geese	20	60
Minnesota			
Ducks (2)(3)	Oct. 2-Nov. 30	6	12
Mergansers	Same as for Ducks	5	10
Coots (4)	Same as for Ducks	15	30
Geese:			
Canada:			
West Zone:			
Rochester Zone	Oct. 2-Dec. 7 &	3	6
	Dec. 16-Jan. 2	3	6
Rest of State	Oct. 2-Dec. 25	3	6
White-fronted	Oct. 2-Dec. 25	1	2
Brant	Oct. 2-Dec. 25	1	2
Light Geese	Oct. 2-Dec. 25	20	40

	Season Dates	Limits Bag	Limits Possession
Mississippi			
Ducks	Nov. 26-Nov. 28 &	6	12
	Dec. 3-Dec. 6 &		
	Dec. 9-Jan. 30		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese:			
Canada	Nov. 22-Jan. 30	3	6
White-fronted	Nov. 20-Jan. 30	2	4
Brant	Same as for Canada geese	2	4
Light Geese	Same as for White-fronted	20	-
Missouri			
Ducks and Mergansers:		6	12
North Zone	Oct. 30-Dec. 28		
Middle Zone	Nov. 6-Jan. 4		
South Zone	Nov. 25-Jan. 23		
Coots	Same as for Ducks	15	30
Geese:			
Canada	Oct. 2-Oct. 10 &	3	6
	Nov. 25-Jan. 31	3	6
White-fronted	Nov. 25-Jan. 31	2	4
Brant	Same as for Canada geese	1	2
Light Geese	Oct. 30-Jan. 31	20	--
Ohio			
Ducks (2):		6	12
North Zone	Oct. 16-Nov. 14 &		
	Nov. 20-Dec. 19		
South Zone	Oct. 16-Oct. 31 &		
	Dec. 11-Jan. 23		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese:			
Canada:			
North Zone:			
Lake Erie SJBP Zone	Oct. 16-Nov. 14 &	2	4
	Nov. 20-Jan. 2	2	4
Rest of North Zone	Oct. 16-Nov. 28 &	2	4
	Dec. 18-Jan. 16	2	4
South Zone	Oct. 16-Nov. 7 &	2	4
	Dec. 11-Jan. 30	2	4
White-fronted and Brant	Same as for Canada geese	2	4
Light Geese	Same as for Canada geese	10	30
Tennessee			
Ducks:		6	12
Reelfoot Zone	Nov. 13-Nov. 14 &		
	Dec. 4-Jan. 30		
State Zone	Nov. 27-Nov. 28 &		
	Dec. 4-Jan. 30		

	Season Dates	Limits Bag	Possession
Tennessee (cont.)			
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese:			
Canada:			
Northwest Zone	Dec. 4-Feb. 13	2	4
Southwest Zone	Oct. 9-Oct. 20 &	2	4
	Nov. 27-Nov. 28 &	2	4
	Dec. 4-Jan. 30	2	4
Kentucky/Barkley Lakes Zone	Same as Southwest Zone	2	4
Rest of State	Same as Southwest Zone	2	4
White-fronted	Dec. 4-Feb. 13	2	4
Brant	Nov. 23-Jan. 31	2	4
Light Geese	Nov. 24-Mar. 10	20	--
Wisconsin			
Ducks (2):		6	12
North Zone	Sept. 25-Nov. 23		
South Zone	Oct. 2-Oct. 10 &		
	Oct. 16-Dec. 5		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese:			
Canada:			
Horicon Zone	Sept. 16-Dec. 16	Tag System--See State Regulations	
Collins Zone	Sept. 16-Nov. 19	Tag System--See State Regulations	
Exterior Zone:			
North Portion:			
Brown Co. Subzone - North	Sept. 18-Dec. 11	2	4
Remainder of North Portion	Sept. 18-Dec. 11	2	4
South Portion:			
Brown Co. Subzone - South	Sept. 18-Oct. 10 &	2	4
	Oct. 16-Dec. 16	2	4
Mississippi River Subzone	Oct. 2-Oct. 10 &	2	4
	Oct. 16-Dec. 30	2	4
Remainder of South Portion	Same as Brown Co. Subzone	2	4
White-fronted:			
Horicon Zone	Sept. 22-Dec. 16	1	2
Collins and Exterior Zones	Same as for Canada geese	1	2
Brant	Same as for Canada geese	1	2
Light Geese	Same as for Canada geese	10	20

(1) In Louisiana, during the Canada goose season, the daily bag limit is 2 dark geese (whitefronts and Canada geese) with no more than 1 Canada goose. Possession limits are twice the daily bag limits.
(2) In Michigan, Minnesota, Ohio, and Wisconsin, the daily bag limit may include no more than one hen mallard.
(3) In Minnesota, the daily bag limit for wood ducks is 2. Possession limits are twice the daily bag limit.
(4) In Minnesota, the daily bag limit is 15 and the possession limit is 30 coots and moorhens in the aggregate.

CENTRAL FLYWAY

Flyway-wide Restrictions

Duck Limits: The daily bag limit is 6 ducks, which may include no more than 5 mallards (2 female mallards), 1 mottled duck, 2 pintails, 1 canvasback, 2 redheads, 2 scaup, and 3 wood ducks. The possession limit is twice the daily bag limit.

Merganser Limits: The daily bag limit is 5 mergansers with 10 in possession and may include no more than 2 hooded mergansers daily and 4 in possession. In states that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which only 2 daily and 4 in possession may be hooded mergansers.

	Season Dates	Limits: Bag	Limits: Possession
Colorado			
Ducks:		6	12
Eastern Plains Zone:	Oct. 2-Oct. 18 &		
	Nov. 6-Jan. 23		
Mountain/Foothills Zone:	Oct. 2-Nov. 29 &		
	Dec. 18-Jan. 23		
Coots	Same as for Ducks	15	30
Mergansers	Same as for Ducks	5	10
Dark Geese:			
Northern Front Range Unit	Oct. 2-Oct. 11 &	4	8
	Nov. 13-Feb. 13	4	8
South Park/San Luis Valley Unit	Same as N. Front Range Unit	4	8
North Park Unit	Same as N. Front Range Unit	4	8
Rest of State in Central Flyway	Nov. 13-Feb. 13	4	8
Light Geese:			
Northern Front Range Unit	Oct. 30-Feb. 13	20	--
South Park/San Luis Valley Unit	Same as N. Front Range Unit	20	--
North Park Unit	Same as N. Front Range Unit	20	--
Rest of State in Central Flyway	Same as N. Front Range Unit	20	--
Kansas			
Ducks:		6	12
High Plains	Oct. 9-Jan. 3 &		
	Jan. 22-Jan. 30		
Low Plains:			
Early Zone	Oct. 9-Dec. 5 &		
	Dec. 18-Jan. 2		
Late Zone	Oct. 30-Jan. 2 &		
	Jan. 22-Jan. 30		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Dark Geese:			
Canada	Oct. 30-Nov. 7 &	3	6
	Nov. 10-Feb. 13	3	6
White-fronted	Oct. 30-Nov. 7 &	2	4
	Nov. 10-Jan. 2 &	2	4
	Feb. 5-Feb. 13	2	4
Light Geese	Oct. 30-Nov. 7 &	20	--
	Nov. 10-Feb. 13	20	--

	Season Dates	Limits Bag	Limits Possession
Montana			
Ducks and Mergansers:		6	12
Zone 1:	Oct. 2-Jan. 6		
Zone 2	Same as for Zone 1		
Coots	Same as for Ducks	15	30
Dark Geese	Oct. 2-Jan. 14	4	8
Light Geese	Oct. 2-Jan. 14	6	12
Nebraska			
Ducks (1):			612
High Plains:	Oct. 9-Jan. 12		
Low Plains:			
Zones 1 and 2:	Oct. 16-Oct. 17 & Oct. 23-Jan. 2		
Zones 3 and 4:	Oct. 2-Dec. 12 & Dec. 18-Dec. 19		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese:			
Canada:			
Niobrara Unit	Oct. 23-Feb. 4	3	6
East Unit	Oct. 23-Jan. 26	3	6
North Central Unit	Oct. 9-Jan. 21	3	6
Platte River Unit	Oct. 23-Jan. 16 &	3	6
	Jan. 22-Feb. 9	3	6
White-fronted	Oct. 9-Dec. 17 &	2	4
	Feb. 5-Feb. 6	1	2
Light Geese	Oct. 9-Jan. 2 &	20	--
	Jan. 22-Feb. 9	20	--
New Mexico			
Ducks and Mergansers (2):		6	12
North Zone:	Oct. 9-Jan. 12		
South Zone:	Oct. 27-Jan. 30		
Coots	Same as for Ducks	15	30
Dark Geese (3):			
Middle Rio Grande Valley Unit (3)	Jan. 1-Jan. 23	2	2
Rest of State	Oct. 17-Jan. 31	4	8
Light Geese	Oct. 17-Jan. 31	20	80
North Dakota			
Ducks:		6	12
High Plains	Sept. 25-Dec. 5 & Dec. 11-Jan. 2		
Remainder of State	Sept. 25-Dec. 5		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese (4):			
Canada Geese:			
Missouri River Zone	Sept. 25-Dec. 31	3	6
Rest of State	Sept. 25-Dec. 23	3	6

	Season Dates	Limits Bag	Possession
North Dakota (cont.)			
White-fronted	Sept. 25-Dec. 5	2	4
Light Geese	Sept. 25-Dec. 31	20	-
Oklahoma			
Ducks:		6	12
High Plains:	Oct. 9-Jan. 5		
Low Plains:			
Zone 1:	Oct. 23-Nov. 28 &		
	Dec. 11-Jan. 16		
Zone 2:	Nov. 6-Nov. 28 &		
	Dec. 11-Jan. 30		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese:			
Canada	Oct. 30-Nov. 28 &	3	6
	Dec. 11-Feb. 13	3	6
White-fronted	Oct. 30-Nov. 28 &	1	2
	Dec. 11-Feb. 4	1	2
Light Geese	Oct. 30-Nov. 28 &	20	--
	Dec. 11-Feb. 13	20	-
South Dakota			
Ducks:		6	12
High Plains	Oct. 9-Dec. 21 &		
	Dec. 22-Jan. 13		
Low Plains::			
North Zone	Sept. 25-Dec. 7		
Middle Zone	Same as for North Zone		
South Zone	Oct. 9-Dec. 21		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese:			
White-fronted	Sept. 25-Dec. 19	1	2
Canada:			
Unit 1	Oct. 1-Dec. 19	3	6
Unit 2	Oct. 30-Feb. 11	3	6
Unit 3	Oct. 16-Dec. 19 &	3	6
	Jan. 8-Jan. 16	3	6
Light Geese	Sept. 25-Dec. 19	20	-
Texas			
Ducks (5):		6	12
High Plains	Oct. 23-Oct. 24 &		
	Oct. 29-Jan. 23		
Low Plains:			
North Zone	Oct. 30-Nov. 28 &		
	Dec. 11-Jan. 23		
South Zone	Same as North Zone		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30

	Season Dates	Limits Bag	Limits Possession
Texas (cont.)			
Geese:			
East Tier:			
South Zone:			
Canada geese and Brant	Oct. 30-Jan. 23	3	6
White-fronted	Oct. 30-Jan. 9	2	4
Light Geese	Oct. 30-Jan. 23	20	--
North Zone	Same as for South Zone		
West Tier:			
Dark Geese:		5	10
Canada geese and Brant	Nov. 6-Feb. 6		
White-fronted	Same as for Canada geese	1	2
Light Geese	Same as for Canada geese	20	--
Wyoming			
Ducks (6):		6	12
Zone C1	Oct. 2-Oct. 19 &		
	Oct. 30-Jan. 16		
Zone C2	Sept. 25-Nov. 28 &		
	Dec. 11-Jan. 11		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Dark Geese:			
Zone C1:			
Goshen/Platte Co. (7)	Oct. 2-Oct. 19 &	2	4
	Nov. 13-Feb. 7	4	8
Rest of Zone C1	Oct. 2-Oct. 19 &	5	10
	Nov. 6-Dec. 5 &	5	10
	Dec. 11-Feb. 5	5	10
Zone C2:			
Big Horn/Fremont Co.	Sept. 25-Oct. 19 &	5	10
	Oct. 30-Dec. 5 &	5	10
	Dec. 11-Jan. 22	5	10
Rest of Zone C2	Sept. 25-Nov. 28 &	5	10
	Dec. 11-Jan. 19	5	10
Light Geese	Oct. 2-Dec. 26 &	10	40
	Jan. 20-Feb. 7	10	40

(1) In Nebraska, the season for mottled ducks is closed.
(2) In New Mexico, Mexican-like ducks are included in the aggregate with mallards.
(3) In New Mexico, the season for dark geese is closed in Bernalillo, Sandoval, Sierra, and Valencia Counties. In the Middle Rio Grande Valley Unit, a state permit is required.
(4) In North Dakota, see State regulations for additional shooting hour restrictions.
(5) In Texas, the daily bag limit is 6 ducks, which may include no more than 5 mallards (only 2 of which may be hens), 2 redheads, 2 scaup, 3 wood ducks, 1 canvasback, 2 pintails, and 1 dusky duck (mottled duck, black duck and their hybrids, or Mexican-like duck). The season for dusky ducks is closed the first 5 days of the season in all zones. The possession limit is twice the daily bag limit.
(6) In Wyoming, the daily bag limit may include no more than 1 hen mallard.
(7) See State regulations for additional restrictions.

PACIFIC FLYWAY

Flyway-wide Restrictions

Duck and Merganser Limits: The daily bag limit of 7 ducks (including mergansers) may include no more than 2 female mallards, 2 pintails, 2 redheads, 3 scaup, and 1 canvasback. The possession limit is twice the daily bag limit.

Coot and Common Moorhen Limits: Daily bag and possession limits are in the aggregate for the two species.

	Season Dates	Limits	
		Bag	Possession
Arizona			
Ducks (1):		7	14
North Zone:			
Scaup	Oct. 23-Jan. 16	3	6
Other Ducks	Oct.8-Jan.16		
South Zone:			
Scaup	Nov. 6-Jan. 30	3	6
Other Ducks	Oct. 22-Jan. 30		
Coots and moorhens	Same as Other Ducks	25	25
Geese (2):			
North Zone:	Oct. 8-Jan. 16		
Dark Geese		3	6
Light Geese		6	12
South Zone:	Oct. 22-Jan. 30		
Dark Geese		3	6
Light Geese		6	12
California			
Ducks:		7	14
Northeastern Zone:			
Scaup	Oct. 9-Jan. 2	3	6
Other Ducks	Oct. 9-Jan. 21		
Colorado River Zone:			
Scaup	Nov. 6-Jan. 30	3	6
Other Ducks	Oct. 22-Jan. 30		
Southern Zone:			
Scaup	Nov. 6-Jan. 30	3	6
Other Ducks	Oct. 23-Jan. 30		
Southern San Joaquin Valley Zone:			
Scaup	Nov. 13-Jan. 30	3	6
Other Ducks	Oct. 9-Oct. 31 & Nov. 13-Jan. 30		
Balance-of-State Zone:			
Scaup	Nov. 6-Jan. 30	3	6
Other Ducks	Oct. 23-Jan. 30		
Coots and moorhens	Same as for Other Ducks	25	25
Geese:			
Northeastern Zone:		8	16
Canada Geese:			
Small Canada Geese (3)	Oct. 9-Jan. 16	1	2
Large Canada Geese (4)	Oct. 9-Jan. 16	2	4

	Season Dates	Limits Bag	Limits Possession
California (cont.)			
White-fronted Geese	Oct. 9-Jan. 16	4	8
Light Geese	Oct. 9-Jan. 16	6	12
Colorado River Zone:		6	12
Dark Geese	Oct. 22-Jan. 30	3	6
Light Geese	Oct. 22-Jan. 30	6	12
Southern Zone:		8	16
Dark Geese	Oct. 23-Jan. 30	3	6
Light Geese:			
Imperial Valley	Nov. 6-Jan. 30 &	6	12
	Feb. 12-Feb. 27	6	12
Rest of Zone	Oct. 23-Jan. 30	6	12
Balance-of-State Zone:		8	16
Canada Geese:			
Small Canada geese (3)	Oct. 23-Jan. 30	6	12
Large Canada geese (4)	Oct. 2-Oct. 6	6	12
	Oct. 23-Jan. 30	6	12
White-fronted Geese:			
Sacramento Valley	Oct. 23-Dec. 14	2	4
Rest of Zone	Oct. 23-Jan. 30	4	8
Light Geese	Oct. 23-Jan. 30	6	12
Del Norte & Humboldt Counties:		6	12
Canada:			
Small Canada geese (3)	Nov. 6-Jan. 30 &	6	12
	Feb. 20-Mar. 10	6	12
Large Canada geese (4)	Nov. 6-Jan. 30	1	2
White-fronted Geese	Oct. 23-Jan. 30	4	8
Light Geese	Oct. 23-Jan. 30	6	12
Brant			
North Zone	Nov. 7-Dec. 6	2	4
South Zone	Nov. 13-Dec. 12	2	4
Colorado			
Ducks:		7	14
Scaup	Sept. 25-Oct. 12 &	3	6
	Nov. 5-Jan. 11	3	6
Other Ducks	Sept. 25-Oct. 12 &		
	Nov. 5-Jan. 30		
Coots	Same as for Other Ducks	25	25
Dark Geese	Sept. 25-Oct. 3 &	3	6
	Nov. 5-Jan. 30	3	6
Light Geese	Same as for Dark Geese	10	20
Idaho			
Ducks:		7	14
Zone 1:			
Scaup	Oct. 23-Jan. 14	3	6
Other Ducks	Oct. 2-Jan. 14		
Zone 2	Same as Zone 1		
Zone 3:			
Scaup	Oct. 30-Jan. 21	3	6
Other Ducks	Oct. 9-Jan. 21		

	Season Dates	Limits	
		Bag	Possession
Idaho (cont.)			
Coots	Same as for Other Ducks	25	25
Dark Geese:			
Zone 1	Oct. 2-Jan. 14	4	8
Zone 2	Oct. 9-Jan. 21	4	8
Zone 3	Same as for Zone 2	3	6
Zone 4	Same as for Zone 1	4	8
Zone 5	Same as for Zone 1	4	8
Light Geese:			
Zone 1	Oct. 2-Jan. 14	10	20
Zone 2	Oct. 29-Jan. 21 &	10	20
	Feb. 19-Mar. 10	10	20
Zone 3	Same as for Zone 2	10	20
Zone 4 (5)	Same as for Zone 1	10	20
Zone 5 (6)	Same as for Zone 1	10	20
Montana			
Ducks		7	14
Scaup	Oct. 2-Dec. 26	3	6
Other Ducks	Oct. 2-Jan. 14		
Coots	Same as for Other Ducks	25	25
Geese (6):			
Dark	Oct. 2-Jan. 14	4	8
Light	Oct. 2-Jan. 14	6	12
Nevada			
Ducks:		7	14
Lincoln & Clark Counties:			
Scaup	Nov. 6-Jan. 28	3	6
Other Ducks	Oct. 16-Jan. 28		
Rest of State:			
Scaup	Nov. 6-Jan. 29	3	6
Other Ducks	Oct. 16-Jan. 29		
Coots and moorhens	Same as for Other Ducks	25	25
Dark Geese:			
Lincoln & Clark Counties	Oct. 16-Jan. 28	3	6
Rest of State	Oct. 16-Jan. 29	3	6
Light Geese:			
Lincoln & Clark Counties	Oct. 16-Jan. 28	10	20
Rest of State (8)	Oct. 16-Jan. 29	10	20
New Mexico			
Ducks (9)		7	14
Scaup	Nov. 6-Jan. 301	2	4
Other Ducks	Oct. 18-Jan. 30		
Coots	Same as for Other Ducks	12	24
Moorhens and gallinules	Same as for Other Ducks	12	24
Dark Geese:			
North Zone	Sept. 25-Oct. 10 &	3	6
	Nov. 1-Jan. 30	3	6
South Zone	Oct. 16-Jan. 30	2	4

	Season Dates	Limits Bag	Possession
New Mexico (cont.)			
Light Geese:			
North Zone	Same as Dark Geese	1	2
South Zone	Same as Dark Geese	1	2
Oregon			
Ducks:		7	14
Zone 1:			
Columbia Basin Unit:			
Scaup	Nov. 6-Jan. 30	3	6
Other Ducks	Oct. 16-Oct. 24 &		
	Oct. 27-Jan. 30		
Rest of Zone 1	Same as for Columbia Basin Unit		
Zone 2:			
Scaup	Oct. 9-Nov. 28 &	3	6
	Dec. 1-Jan. 4	3	6
Other Ducks	Oct. 9-Nov. 28 &		
	Dec. 1-Jan. 23		
Coots	Same as for Other Ducks	25	25
Geese:			
Northwest General Goose Zone:			
Dark Geese	Oct. 16-Oct. 24 &	4	8
	Nov. 4-Jan. 30	4	8
Small Canada Geese (3)		1	2
Light Geese	Same as for Dark Geese	6	12
Northwest Special Permit Zone (10):			
Dark Geese	Oct. 30-Nov. 8 &	4	8
	Nov. 20-Jan. 12 &	4	8
	Feb. 5-Mar. 9	4	8
Dusky Canada geese		1 per season	
Small Canada geese (3)		2	4
Light Geese	Same as for Dark Geese	4	8
Southwest General Zone:			
Dark Geese	Oct. 16-Dec. 3 &	4	8
	Dec. 11-Jan. 30	4	8
Light Geese	Same as for Dark Geese	6	12
South Coast Zone:			
Dark Geese	Oct. 2-Oct. 31 &	4	8
	Nov. 24-Jan. 17 &	4	8
	Feb. 19-Mar. 10	4	8
Light Geese	Oct. 2-Oct. 31 &	6	12
	Nov. 24-Jan. 17	6	12
Harney and Lake County Zone:			
Dark Geese	Oct. 9-Nov. 28 &	4	8
	Dec. 13-Jan. 30	4	8
Small Canada geese		1	2
White-fronted geese:			
Lake County		1	2
Rest of Zone		4	8
Light Geese	Same as Dark Geese	6	12

	Season Dates	Limits Bag	Limits Possession
Oregon (cont.)			
Malheur County Zone:			
Dark Geese	Oct. 9-Nov. 28 &	4	8
	Dec. 13-Jan. 30	4	8
Small Canada geese		1	2
Light Geese	Oct. 9-Nov. 28 &	10	20
	Dec. 28-Jan. 30 &	10	20
	Feb. 19-Mar. 10	10	20
Klamath County Zone:			
Dark Geese	Oct. 9-Nov. 28 &	4	8
	Dec. 18-Jan. 20 &	4	8
Small Canada geese		1	2
White-fronted geese (special season)	Feb. 19-Mar. 10	4	8
Light Geese	Oct. 9-Nov. 28 &	6	12
	Dec. 18-Jan. 20 &	6	12
	Feb. 19-Mar. 10	6	12
Eastern Zone:			
Dark Geese	Oct. 16-Oct. 24 &	4	8
	Nov. 1-Jan. 30	4	8
Small Canada geese		1	2
Light Geese	Same as Dark Geese	6	12
Tillamook County (10)(11):			
Dark Geese	Dec. 4-Mar. 9	3	6
Light Geese	Dec. 4-Mar. 9	4	8
Brant	Nov. 20-Dec. 5	2	4
Utah (12)			
Ducks:		7	14
Zone 1:			
Scaup	Oct. 2-Dec. 26	3	6
Other Ducks	Oct. 2-Jan. 15		
Zone 2	Same as for Zone 1		
Coots	Same as for Other Ducks	25	25
Geese:			
Light:			
North Goose Zone	Oct. 23-Jan. 15 &	10	20
	Feb. 18-Mar. 10	10	20
Rest of State	Oct. 30-Jan. 30 &	10	20
	Mar. 5-Mar. 10	10	20
Dark:			
North Goose Zone	Oct. 2-Jan. 15	3	6
Rest of State	Oct. 2-Oct. 14 &	3	6
	Oct. 30-Jan. 30	3	6
Washington			
Ducks:		7	14
East Zone:			
Scaup	Nov. 6-Jan. 30	3	6
Other Ducks	Oct. 16-Oct 20 &		
	Oct. 23-Jan. 30		
West Zone (13)	Same as the East Zone		
Coots	Same as for Other Ducks	25	25

	Season Dates	Limits Bag	Possession
Washington (cont.)			
Geese:			
Management Area 1 (14):		4	8
Light Geese	Oct 16-Jan. 30		
Dark Geese	Oct 16-Oct. 28 & Nov. 6-Jan. 30		
Management Area 2A (15)	Nov. 13-Nov. 24 &	4	8
	Nov. 27-Nov. 29 &	4	8
	Dec. 8-Jan. 30	4	8
Dusky Canada geese		1 per season	
Late-Season Canada Geese	Feb. 5-Mar. 9	4	8
Dusky Canada geese		1 per season	
Management Area 2B (15)	Oct. 16-Jan. 15	4	8
Dusky Canada geese		1 per season	
Management Areas 3 (14)	Oct. 16-Oct. 28 &	4	8
	Nov. 6-Jan. 30	4	8
Management Areas 4 & 5 (14)	Oct. 16-Oct. 20 &	4	8
	Oct. 23-Jan. 30	4	8
Brant (16):			
Skagit County	Jan. 15-Jan. 30	2	4
Pacific County	Jan. 15-Jan. 30	2	4
Wyoming			
Ducks:		7	14
Snake River Zone:			
Scaup	Sept. 25-Dec. 19	3	6
Other Ducks	Sept. 25-Jan. 7		
Balance of State Zone	Same as Snake River Zone		
Coots	Same as for Other Ducks	25	25
Dark Geese:	Sept. 25-Dec. 30	3	6

(1) In Arizona, the daily limit may include no more than either 2 hen mallards or 2 Mexican-like ducks, or 1 of each; and not more than 4 hen mallards and Mexican-like ducks, in the aggregate, may be in possession.
(2) In Arizona, in Yuma County, La Paz County, Game Management Units 13B, 15, and that portion of Unit 16 lying within Mohave County, the bag and possession limits are 3 and 6 for Canada geese, and 4 and 8 for light geese, respectively.
(3) In California and Oregon, small Canada geese are Cackling and Aleutian Canada geese.
(4) In California, large Canada geese are Western and Lesser Canada geese.
(5) In Idaho, the season on light geese is closed in Fremont and Teton Counties.
(6) In Idaho, in that portion of Zone 5 within the Upper Snake Region in Bingham County in GMU 63 south of highway 20 and west of the west bank of the Snake River and in that portion of the Southeast Region within Power and Bingham counties in GMUs 68 and 68A west of the west bank of the Snake River and American Falls Reservoir bluff, the light goose season is October 22 to January 14 and February 19 to March 10.
(7) In Montana, check State regulations for special seasons/exceptions in Freezout Lake WMA; Canyon Ferry; Flathead; Deer Lodge County; and Missoula County.
(8) In Nevada, there is no open season on light geese in Ruby Valley within Elko and White Pine Counties.
(9) In New Mexico, the daily bag limit consists of no more than 7 mallards (of which only 2 may be hen mallards), 2 redheads, 2 scaup (when open), and 1 northern pintail.
(10) In Oregon, the Northwest Special Permit Zone is closed to all goose hunting, except for designated areas. See State regulations for specific boundary descriptions, times, days, and other conditions of the special permit season.

(11) In Oregon, the daily dark goose bag limit in Tillamook County is 3 with not more than 2 cackling or Aleutian geese per day.
(12) In Utah, the shooting hours are 7:30 a.m. to sunset on October 2 in Cache, Salt Lake, Davis, Weber, and Box Elder Counties.
(13) In Washington, the daily bag limit in the West Zone may include no more than 2 scoters, 2 oldsquaws, and 2 goldeneyes, with the possession limit twice the daily bag limit. The daily bag and possession limit, and the season limit, for harlequins is 1.
(14) In Washington, in State Goose Area 4, hunting is only on Saturdays, Sundays, Wednesdays, and certain holidays. In State Goose Areas 1, 3, and 5, hunting is everyday. See State regulations for details, including shooting hours.
(15) In Washington, see State regulations for specific dates and conditions of permit hunts and closures for Canada geese.
(16) In Washington, brant may be hunted in Skagit and Pacific Counties only; see State regulations for specific dates.

(f) Youth Waterfowl Hunting Days

The following seasons are open only to youth hunters. Youth Hunters must be accompanied into the field by an adult at least 18 years of age. This adult can not duck hunt but may participate in other open seasons.

Definition

Youth Hunters: Includes youths 15 years of age or younger.
NOTE: The following seasons are in addition to the seasons published previously in the August 31, 2010 Federal Register (75 FR 53226). Bag and possession limits will conform to those set for the regular season.

	Season Dates
ATLANTIC FLYWAY	
* * * * *	
Florida	
Ducks, mergansers, coots, moorhens, and geese	Feb. 5 & 6
* * * * *	
Maryland	
Ducks, coots, snow geese, Canada geese, sea ducks, and brant (1)	Nov. 6
Massachusetts	
Ducks, mergansers, coots, and geese	Oct. 9 & 11
* * * * *	
North Carolina	
Ducks, mergansers, brant, dark geese (9), light geese, tundra swans (10), and coots	Feb. 5
* * * * *	
South Carolina	
Ducks, geese, mergansers, and coots	Feb. 5 & 6
* * * * *	

	Season Dates
Virginia	
Ducks, mergansers, coots, moorhens, gallinules, tundra swans (10) and Canada geese (11)	Oct. 23
* * * * *	
MISSISSIPPI FLYWAY	
* * * * *	
Arkansas	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Feb. 5 & 6
* * * * *	
Indiana	
Ducks, mergansers, coots, moorhens, gallinules, and geese:	
North Zone	Oct. 9 & 10
South Zone	Oct. 16 & 17
Ohio River Zone	Oct. 23 & 24
* * * * *	
Kentucky	
Ducks, geese, mergansers, coots, moorhens, and gallinules:	
West Zone	Feb. 5 & 6
East Zone	Nov. 6 & 7
Louisiana	
Ducks, mergansers, coots, moorhens, gallinules, and geese:	
West Zone	Nov. 6 & 7
East Zone	Nov. 13 & 14
* * * * *	
Mississippi	
Ducks, mergansers, coots, moorhens, gallinules, and geese	Feb. 5 & 6
Missouri	
Ducks, coots, mergansers, moorhens, gallinules, and geese:	
North Zone	Oct. 23 & 24
Middle Zone	Oct. 23 & 24
South Zone	Nov. 20 & 21
Ohio	
Ducks, mergansers, coots, moorhens, gallinules, and geese	Oct. 2 & 3
Tennessee	
Ducks, mergansers, coots, moorhens, gallinules, and geese:	
Reelfoot Zone	Feb. 12 & 13
Remainder of State	Feb. 5 & 6

	Season Dates
* * * * *	
CENTRAL FLYWAY	
* * * * *	
Kansas (5)	
Ducks, dark geese, mergansers and coots:	
High Plains	Oct. 2 & 3
Low Plains:	
Early Zone	Oct. 2 & 3
Late Zone	Oct. 23 & 24
* * * * *	
Oklahoma	
Ducks, mergansers, coots, and geese:	
High Plains	Oct. 2 & 3
Low Plains:	
Zone 1	Oct. 16 & 17
Zone 2	Oct. 30 & 31
* * * * *	
Texas	
Ducks, mergansers, and coots:	
High Plains	Oct. 16 & 17
Low Plains:	
North Zone	Oct. 23 & 24
South Zone	Oct. 23 & 24
* * * * *	
PACIFIC FLYWAY	
Arizona	
Ducks, geese, brant, mergansers, coots, moorhens, and gallinules	
North Zone	Oct. 2 & 3
South Zone	Feb. 5 & 6
California	
Ducks, geese, brant, mergansers, coots, moorhens, and gallinules	
Northeastern Zone	Sept. 25 & 26
Colorado River Zone	Feb. 5 & 6
Southern Zone	Feb. 5 & 6
Southern San Joaquin Valley	Feb. 5 & 6
Balance-of-State Zone	Feb. 5 & 6

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	Season Dates
Nevada	
Ducks, geese, mergansers, coots, moorhens, and gallinules	
Lincoln and Clark Counties	Feb. 5 & 6
Rest of State	Oct. 2

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(1) In Maryland, the accompanying adult must be at least 21 years of age and possess a valid Maryland hunting license (or be exempt from the license requirement). This accompanying adult may not shoot or possess a firearm.

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(5) In Kansas, the nonresident youth, must be licensed and possess state and federal duck stamps as required by state or federal regulation to hunt waterfowl.

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(9) In North Carolina, the daily bag limit in the Northeast Hunt Zone may not include dark geese except by permit.
(10) In North Carolina and Virginia, the daily bag limit may not include tundra swans except by permit.
(11) In Virginia, the daily bag limit for Canada geese is 2.

4. Section 20.106 is amended by adding the entries for the following States in alphabetical order to read as follows:

§20.106 Seasons, limits, and shooting hours for sandhill cranes.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and Hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations.

Area descriptions were published in the August 31, 2010 (75 FR 52873) Federal Register.

Note: The following seasons are in addition to the seasons published previously in the August 31, 2010 Federal Register (75 FR 53226).

	Season Dates	Limits Bag	Limits Possession
CENTRAL FLYWAY			
* * * * *			
Oklahoma (1)	Oct. 23-Jan. 23	3	6
* * * * *			

	Season Dates	Limits Bag	Possession
Texas (1):			
Zone A	Nov. 6-Feb. 6	3	6
Zone B	Nov. 26-Feb. 6	3	6
Zone C	Dec. 18-Jan. 23	2	4
* * * * *			

(1) Each person participating in the regular sandhill crane seasons must have a valid sandhill crane hunting permit and/or a State-issued Harvest Information Survey Program (HIP) certification for game bird hunting in their possession while hunting.

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5. Section 20.107 is revised to read as follows:

§20.107 Seasons, limits, and shooting hours for swans.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Hunting is by State permit only.

NOTE: Successful permittees must immediately validate their harvest by that method required in State regulations.

	Season Dates	Limits Bag	Possession
ATLANTIC FLYWAY			
North Carolina	Nov. 13-Jan. 31	1 tundra swan per season	
Virginia	Dec. 1-Jan 31	1 tundra swan per season	
CENTRAL FLYWAY (1)			
Montana	Oct. 2-Jan. 6	1 tundra swan per season	
North Dakota	Oct. 2-Jan. 2	1 tundra swan per season	
South Dakota	Oct. 2-Dec. 19	1 tundra swan per permit	
PACIFIC FLYWAY (1)(2)			
Montana (3)	Oct. 9-Dec. 1	1 swan per season	
Nevada (4)(5)	Oct. 16-Jan. 2	2 swans per season	
Utah (5)(6)	Oct. 2-Dec. 12	1 swan per season	

(1) See State regulations for description of area open to swan hunting.
(2) Any species of swan may be taken.
(3) In Montana, all harvested swans must be reported by way of a bill measurement card within 3 days of harvest.
(4) All harvested swans and tags must be checked or registered within 5 days of harvest.
(5) Harvests of trumpeter swans are limited to 5 in Nevada and 10 in Utah. When it has been determined that the quota of trumpeter swans allotted to Nevada and Utah will have been filled, the season for taking of any swan species in the respective State will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.
(6) In Utah, all harvested swans and tags must be checked or registered within 3 days of harvest.

6. Section 20.109 is amended by adding the entries for the following States in alphabetical order to read as follows:

§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise restricted by State regulations.

Area descriptions were published in the August 25, 2010 (75 FR 52398) and August 31, 2010 (75 FR 52873) Federal Registers.

Limits: The daily bag limit may include no more than 3 migratory game birds, singly or in the aggregate. The possession limit is twice the daily bag limit. These limits apply to falconry during both regular hunting seasons and extended falconry seasons -- unless further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas.

Although many States permit falconry during the gun seasons, only extended falconry seasons are shown below. Please consult State regulations for details.

NOTE: The following seasons are in addition to the seasons published previously in the August 31, 2010 Federal Register (75 FR 53226).

	Extended Falconry Dates
ATLANTIC FLYWAY	
Delaware	
* * * * *	
Ducks, mergansers, and coots	Jan. 31-Mar. 5
Brant	Jan. 31-Mar. 5

	Extended Falconry Dates
Florida	
* * * * *	
Ducks, mergansers, light geese, and coots	Oct. 30-Nov. 12 & Feb. 7-Mar. 4
Georgia	
Ducks, mergansers, gallinules, coots, and sea ducks	Nov. 29-Dec. 10 & Jan. 31-Feb. 11
Maine	
Ducks, mergansers, and coots (4):	
North Zone	Dec. 10-Feb. 1
South Zone	Jan. 5-Feb. 26
Maryland	
* * * * *	
Ducks	Feb. 1-Mar. 10
Brant	Jan. 30-Mar. 10
Light Geese	Feb. 5-Feb. 15
Massachusetts	
Ducks, mergansers, sea ducks, and coots	Jan. 31-Feb. 10
New Hampshire	
Ducks, mergansers, and coots:	
Inland Zone	Nov. 8-Nov. 23 & Dec. 20-Jan. 17
Coastal Zone	Jan. 25-Mar. 10
New Jersey	
Woodcock:	
North Zone	Oct. 1-Oct. 13 & Nov. 7-Jan. 15
South Zone	Oct. 1-Nov. 5 & Nov. 28-Dec. 30 & Jan. 2-Jan. 15
Ducks, mergansers, coots, and brant:	
North Zone	Jan. 2-Feb. 8
South Zone	Jan. 7-Feb. 13
Coastal Zone	Jan. 26-Mar. 1

	Extended Falconry Dates
New York	
Ducks, mergansers and coots:	
Long Island Zone	Nov. 1-Nov. 23 & Nov. 29-Dec. 6 & Jan. 31-Feb. 13
Northeastern Zone	Oct. 1 & Oct. 12-Oct. 22 & Dec. 12-Jan. 13
Southeastern Zone	Oct. 1-Oct. 8 & Oct. 18-Nov. 5 & Dec. 27-Jan. 13
Western Zone	Oct. 1-Oct. 22 & Dec. 7-Dec. 25 & Jan. 10-Jan. 13
North Carolina	
* * * * *	
Ducks, mergansers and coots	Oct. 25-Nov. 6 & Jan. 31-Feb. 19
Pennsylvania	
* * * * *	
Ducks, mergansers, and coots:	
North Zone	Oct. 25-Nov. 10 & Jan. 5-Jan. 15 & Feb. 21-Mar. 10
South Zone	Oct. 18-Nov. 16 & Feb. 22-Mar. 10
Northwest Zone	Oct. 25-Nov. 5 & Dec. 31-Jan. 15 & Feb. 21-Mar. 10
Lake Erie Zone	Jan. 24-Mar. 10
Canada Geese:	
SJBP Zone	Feb. 28-Mar. 10
AP Zone	Feb. 2-Mar. 10
RP Zone	Mar. 9-Mar. 10
South Carolina	
Ducks, mergansers, and coots	Nov. 3-Nov. 19 & Nov. 28-Dec. 3 & Dec. 5-Dec. 10

	Extended Falconry Dates
Virginia	
* * * * *	
Moorhens and gallinules	Dec. 6-Dec. 10 & Jan. 31-Feb. 19
Ducks, mergansers, and coots	Dec. 6-Dec. 10 & Jan. 31-Feb. 19
Canada Geese:	
Eastern (AP) Zone	Dec. 11-Dec. 23 & Jan. 31-Feb. 26
Western (SJBP) Zone	Dec. 11-Dec. 14 & Feb. 16-Feb. 26
Brant	Oct. 7-Nov. 19 & Nov. 29-Dec. 10 & Jan. 31 only
MISSISSIPPI FLYWAY	
Arkansas	
Ducks, mergansers, and coots	Feb. 1-Feb. 15
Illinois	
* * * * *	
Ducks, mergansers, and coots	Feb. 11-Mar. 10
Indiana	
* * * * *	
Ducks, mergansers, and coots:	
North Zone	Sept. 27-Sept. 30 & Feb. 14-Mar. 10
South Zone	Oct. 16-Oct. 22 & Feb. 17-Mar. 10
Ohio River Zone	Oct. 23-Oct. 29 & Feb. 17-Mar. 10
Iowa	
Ducks, mergansers, and coots	
North Zone	Dec. 15-Jan. 28
South Zone	Dec. 17-Jan. 30

	Extended Falconry Dates
Iowa (cont.)	
White-fronted Geese:	
North Goose Zone	Dec. 6-Jan. 9
South Goose Zone	Dec. 13-Jan. 14
Kentucky	
Ducks, mergansers, and coots	Nov. 5-Nov. 24 & Nov. 29-Dec. 5 & Jan. 31 only
Canada Geese:	
Western Goose Zone:	
Fulton County	Nov. 5-Nov. 22
Rest of Zone	Nov. 5-Nov. 22
Pennyroyal/Coalfield Zone	Nov. 5-Nov. 22
Rest of State	Nov. 5-Nov. 22
White-fronted geese, brant, and light geese	Nov. 5-Nov. 22
Louisiana	
* * * * *	
Rails and moorhens	Nov. 6-Nov. 12 & Jan. 6-Feb. 4
Ducks	
West Zone	Nov. 6-Nov. 12 & Dec. 6-Dec. 17 & Jan. 24-Feb. 4
East Zone	Nov. 6-Nov. 19 & Dec. 6-Dec. 17 & Jan. 31-Feb. 4
Michigan	
Ducks, mergansers, coots, and moorhens	Jan. 3-Feb. 16
Minnesota	
* * * * *	
Ducks, mergansers, coots, moorhens, and gallinules	Dec. 1-Jan. 15
Mississippi	
Mourning Doves	Nov. 20-Nov. 28 & Jan. 15-Feb. 11
Ducks, mergansers and coots	Feb. 9-Mar. 9

	Extended Falconry Dates
Missouri	
* * * * *	
Ducks, mergansers, and coots:	
Statewide	Sept. 11-Sept. 26 & Feb. 10-Mar. 10
Ohio	
Ducks and coots	Sept. 1-Sept. 19 & Feb. 5-Mar. 4
Geese	Sept. 1-Sept. 19 & Feb. 5-Feb.18
Tennessee	
* * * * *	
Ducks, mergansers, and coots	Sept. 16-Oct. 22
Wisconsin	
Rails, snipe, moorhens, and gallinules	
North Duck Zone	Sept. 1-Sept. 24 & Nov. 25-Dec. 16
South Duck Zone	Sept. 1-Oct. 1 & Oct. 11-Oct. 15 & Dec. 6-Dec. 16
Woodcock	Sept. 1-Sept. 24 & Nov. 9-Dec. 16
Ducks, mergansers, and coots	Sept. 18-Sept. 19 & Jan 7 - Feb 20
CENTRAL FLYWAY	
Kansas	
Ducks, mergansers, and coots:	
Low Plains:	
Early Zone and Late Zone	Feb. 24-Mar. 10
Montana (2)	
Ducks, mergansers, and coots	Sept. 22-Oct. 1

* * * * *

	Extended Falconry Dates
Oklahoma	
Ducks, mergansers, and coots:	
Low Plains:	
Zones 1 and 2	Feb. 15-Mar. 1
South Dakota	
Ducks, mergansers, and coots	
High Plains	Sept. 4-Sept. 11
Low Plains	
North Zone	Sept. 4-Sept. 17 & Sept. 20-Sept. 24 & Dec. 8-Dec. 19
Middle Zone	Sept. 4-Sept. 17 & Sept. 20-Sept. 24 & Dec. 8-Dec. 19
South Zone	Sept. 4-Sept. 17 & Sept. 20-Oct. 6
Texas	
* * * * *	
Ducks, mergansers, and coots:	
Low Plains:	
North Zone and South Zone	Jan. 24-Feb. 7
* * * * *	
Wyoming	
* * * * *	
Ducks, mergansers, and coots	
Zone C1	Sept. 25-Sept. 26 & Oct. 20-Oct. 27
Zone C2	Sept. 18-Sept. 19 & Nov. 29-Dec. 6
PACIFIC FLYWAY	
Arizona	
* * * * *	
Ducks and mergansers:	
North Zone	Oct. 4-Oct. 7
South Zone	Jan. 31-Feb. 3

	Extended Falconry Dates
California	
Ducks, mergansers, and coots:	
Colorado River Zone	Jan. 31-Feb. 3
Southern Zone	Jan. 31-Feb. 4
Balance-of-State Zone	Jan. 31-Feb. 6
Southern San Joaquin Zone	Jan. 31-Feb. 2
Canada Geese and White-fronted Geese:	
Northeastern Zone	Jan. 17-Jan. 19
Southern Zone (5)	Same as for Ducks
Balance-of-State Zone (6)	Same as for Ducks
Southern San Joaquin Zone	Closed
Brant:	
Northern Zone	Oct. 23-Nov. 6 & Dec. 7-Feb. 4
Southern Zone	Oct. 23-Nov. 12 & Dec. 13-Feb. 4
Light Geese:	
Northeastern Zone	Jan. 17-Jan. 19
Southern Zone (5)	Jan. 31-Feb. 4
Balance-of-State Zone (6)	Same as for Ducks
Southern San Joaquin Zone	Closed
* * * * *	
New Mexico	
* * * * *	
Rails	Nov. 27-Jan. 2
* * * * *	
Utah	
* * * * *	
Ducks, mergansers, coots, geese, and snipe	
Statewide	Sept. 18 only
* * * * *	

* * * * *

(2) In Montana, the bag limit is 2 and the possession limit is 6.

* * * * *

(4) In Maine, the daily bag and possession limits for black ducks are 1 and 2, respectively.

(5) In California, the falconry season for geese is concurrent with the regular season for white geese in the Imperial County special management area.

(6) In California, the falconry season for geese is concurrent with the regular season for small Canada geese in Del Norte and Humbolt counties.

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Federal Register

Friday,

September 24, 2010

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2010–11 Late Season; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–R9–MB–2010–0040; 91200–1231–9BPP–L2]

RIN 1018–AX06

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2010–11 Late Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special late-season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. This rule responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service or we) recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

DATES: This rule takes effect on September 24, 2010.

ADDRESSES: You may inspect comments received on the proposed special hunting regulations and tribal proposals during normal business hours in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, VA, or at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703/358–1967), or Tina Chouinard, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (731/432–0981).

SUPPLEMENTARY INFORMATION:

Background

The Migratory Bird Treaty Act of July 3, 1918 (755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

In the August 6, 2010, **Federal Register** (75 FR 47682), we proposed special migratory bird hunting regulations for the 2010–11 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10—September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In the May 13, 2010, **Federal Register** (75 FR 27144), we requested that tribes desiring special hunting regulations in the 2010–11 hunting season submit a proposal including details on:

(1) Harvest anticipated under the requested regulations;

(2) Methods that would be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(3) Steps that would be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

(4) Tribal capabilities to establish and enforce migratory bird hunting regulations.

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. We have successfully used the guidelines since the 1985–86 hunting season. We finalized the guidelines beginning with the 1988–89 hunting season (August 18, 1988, **Federal Register** [53 FR 31612]).

Although the August 6 proposed rule included generalized regulations for both early- and late-season hunting, this rulemaking addresses only the late-season proposals. Early-season proposals were addressed in a final rule published in the September 1, 2010, **Federal Register** (75 FR 53774). As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons begin about September 24 or later each year and have a primary emphasis on waterfowl. All the regulations contained in this final rule were either submitted by the tribes or approved by the tribes and follow our proposals in the August 6 proposed rule.

Status of Populations

In the August 6 proposed rule and September 1 final rule, we reviewed the status for various populations for which seasons were proposed. This information included brief summaries of the May Breeding Waterfowl and Habitat Survey; population status reports for blue-winged teal, sandhill cranes, woodcock, mourning doves, white-winged doves, white-tipped doves, and band-tailed pigeons; and the status and harvest of waterfowl. The tribal seasons established below are commensurate with the population status. For more detailed information on methodologies and results, complete copies of the various reports are available at the street address indicated under **ADDRESSES** or from our Web site at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html.*

Comments and Issues Concerning Tribal Proposals

For the 2010–11 migratory bird hunting season, we proposed regulations for 30 tribes or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. Some of the proposals submitted by the tribes had both early- and late-season elements. However, as noted earlier, only those with late-season proposals are included in this final rulemaking; 14 tribes have proposals with late seasons. We also noted in the August 6 proposed rule (75 FR 47682) that we were proposing seasons for six Tribes that we usually hear from but that we had not yet received proposals from them. We subsequently received proposals from three of these six Tribes. We have not included the remaining three Tribes in this final rule.

The comment period for the August 6 proposed rule closed on August 16, 2010. We did not receive any comments on our May 13, 2010, proposed rule, which announced rulemaking on regulations for migratory bird hunting by American Indian tribal members, or on our August 6 proposed rule.

National Environmental Policy Act (NEPA) Consideration

NEPA considerations are covered by the programmatic document "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published a notice of availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the address indicated under the caption **ADDRESSES.**

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement (SEIS) for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as detailed in a March 9, 2006, **Federal Register** (71 FR 12216). We released the draft SEIS on July 9, 2010 (75 FR 39577). The draft SEIS is available by either writing to the address indicated under **ADDRESSES** or by viewing on our Web site at *http://www.fws.gov/migratorybirds.*

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. * * *." Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to jeopardize the continued existence of any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES.**

Executive Order 12866

The Office of Management and Budget has determined that this rule is significant and has reviewed this rule under Executive Order 12866. OMB bases its determination of regulatory significance upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

An economic analysis was prepared for the 2008–09 season. This analysis was based on data from the 2006 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) Issue restrictive regulations allowing fewer days than those issued during the 2007–08 season, (2) Issue moderate regulations allowing more days than those in alternative 1, and (3) Issue liberal regulations identical to the regulations in the 2007–08 season. For the 2008–09 season, we chose alternative 3, with an estimated consumer surplus across all flyways of $205–$270 million. We proposed no changes to the season frameworks for the 2010–11 season, and as such, we again considered these three alternatives. The final frameworks depended on population status information. For these reasons, we have not conducted a new economic analysis, but the 2008–09 analysis is part of the record for this rule and is available at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov* at Docket No. FWS–R9–MB–2010–0040.

Regulatory Flexibility Act

The regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, and 2008. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2008 Analysis was based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.2 billion at small businesses in 2008. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or by viewing on our Web site at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov* at Docket No. FWS–R9–MB–2010–0040.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of our Migratory Bird Surveys and assigned control number 1018–0023 (expires 2/28/2011). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. A Federal agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. In the May 13 **Federal Register**, we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2010–11 migratory bird hunting season. The resulting proposals were contained in a separate proposed rule (75 FR 47681, August 6, 2010). By virtue of these actions, we have consulted with Tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Indian Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Rulemaking Process

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States and Tribes would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We, therefore, find that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these seasons will, therefore, take effect immediately upon publication.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulations Promulgation

■ Accordingly, part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a–j; Pub. L. 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

Note: The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature.

■ 2. Amend § 20.110 by revising paragraphs (a), (b), (f) through (i), (l), (o), (s), (v) through (aa), and (cc), to read as set forth below. (Current § 20.110 was published at 74 FR 51507, September 2, 2009, and amended at 75 FR 49294, September 25, 2009, and 75 FR 53774, September 1, 2010.)

§ 20.110 Seasons, limits, and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) Colorado River Indian Tribes, Parker, Arizona (Tribal Members and Nontribal Hunters).

Doves

Season Dates: Open September 1 through 15, 2010; then open November 12 through December 26, 2010.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or white-winged doves, singly, or in the aggregate. For the late season, the daily bag limit is 10 mourning doves. Possession limits are twice the daily bag limits after the first day of the season.

Ducks (including mergansers)

Season Dates: Open October 9, 2010, through January 23, 2011.

Daily Bag and Possession Limits: Seven ducks, including two hen mallards, two redheads, two Mexican ducks, two goldeneye, two cinnamon teal, three scaup, and one pintail. The season on canvasback is closed. The possession limit is twice the daily bag limit.

Coots and Common Moorhens

Season Dates: Same as ducks.
Daily Bag and Possession Limits: 25 coots and common moorhens, singly or in the aggregate.

Geese

Season Dates: Open October 16, 2010, through January 23, 2011.
Daily Bag and Possession Limits: Three geese, including no more than three dark (Canada) geese and three white (snow, blue, Ross's) geese. The possession limit is six dark geese and six white geese.
General Conditions: All persons 14 years and older must be in possession of a valid Colorado River Indian Reservation hunting permit before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona.

(b) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Tribal Members and Nontribal Hunters).

Tribal Members Only

Ducks (including mergansers)

Season Dates: Open September 1, 2010, through March 9, 2011.
Daily Bag and Possession Limits: The Tribe does not have specific bag and possession restrictions for Tribal members. The season on harlequin duck is closed.

Coots

Season Dates: Same as ducks.
Daily Bag and Possession Limits: Same as ducks.

Geese

Season Dates: Same as ducks.
Daily Bag and Possession Limits: Same as ducks.

Nontribal Hunters

Ducks (including mergansers)

Scaup Season Dates: Open October 2 through December 26, 2010.
Season Dates: Open October 2, 2010, through January 16, 2011.
Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, two pintail, three scaup (when open), one canvasback, and two redheads. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.
Daily Bag and Possession Limits: The daily bag and possession limit is 25.

Geese

Dark Geese

Season Dates: Open October 2, 2010, through January 16, 2011.
Daily Bag and Possession Limits: Four and eight geese, respectively.

Light Geese

Season Dates: Open October 2, 2010, through January 16, 2011.
Daily Bag and Possession Limits: 10 and 20 geese, respectively.

Youth Waterfowl Hunt

Season Dates: September 25–26, 2010.
Daily Bag and Possession Limits: Same as ducks.
General Conditions: Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations contained in 50 CFR part 20 regarding manner of taking. In addition, shooting hours are sunrise to sunset, and each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Confederated Salish and Kootenai Tribes also apply on the reservation.

* * * * *

(f) Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters).

Ducks (including mergansers)

Season Dates: Open October 9 through November 30, 2010.
Daily Bag and Possession Limits: The daily bag limit is seven, including no more than two hen mallards, two pintail, two redheads, one canvasback, and three scaup. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 9 through November 30, 2010.
Daily Bag and Possession Limits: Two and four, respectively.
General Conditions: Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Jicarilla Tribe also apply on the reservation.

(g) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters).

Nontribal Hunters on Reservation

Ducks

Scaup Season Dates: Open September 25 through December 19, 2010.
Regular Duck Season Dates: Open September 25, 2010, through January 30, 2011. During this period, days to be hunted are specified by the Kalispel Tribe as weekends, holidays, and for a continuous period in the months of October and November, not to exceed 107 days total. Nontribal hunters should contact the Tribe for more detail on hunting days.
Daily Bag and Possession Limits: Seven ducks, including no more than two female mallards, two pintail, one canvasback, three scaup (when open), and two redheads. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1 through 13, 2010, for the early season, and open October 2, 2010, through January 31, 2011, for the late season. During this period, days to be hunted are specified by the Kalispel Tribe. Nontribal hunters should contact the Tribe for more detail on hunting days.
Daily Bag and Possession Limits: 5 Canada geese for the early season, and 6 light geese and 4 dark geese, for the late season. The daily bag limit is 2 brant (when the State's season is open) and is in addition to dark goose limits for the late season. The possession limit is twice the daily bag limit.

Tribal Hunters Within Kalispel Ceded Lands

Ducks

Season Dates: Open September 1, 2010, through January 31, 2011.
Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 2 pintail, 1 canvasback, 3 scaup, and 2 redheads. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, 2010, through January 31, 2011.
Daily Bag Limits: 6 light geese and 4 dark geese. The daily bag limit is 2 brant and is in addition to dark goose limits.
General Conditions: Tribal members must possess a validated Migratory Bird Hunting and Conservation Stamp and a tribal ceded lands permit.

(h) Klamath Tribe, Chiloquin, Oregon (Tribal Members Only).

Ducks

Season Dates: Open October 1, 2010, through January 31, 2011.
Daily Bag and Possession Limits: 9 and 18 ducks, respectively.

Coots

Season Dates: Same as ducks.
Daily Bag and Possession Limits: 25 coots.

Geese

Season Dates: Same as ducks.
Daily Bag and Possession Limits: 9 and 18 geese, respectively.
General Conditions: The Klamath Tribe provides its game management officers, biologists, and wildlife technicians with regulatory enforcement authority, and has a court system with judges that hear cases and set fines. Nontoxic shot is required. Shooting hours are one-half hour before sunrise to one-half hour after sunset.

(i) Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only).

Ducks

Season Dates: Open September 18, through December 31, 2010.
Daily Bag and Possession Limits: 10 ducks, including no more than 5 pintail, 5 canvasback, and 5 black ducks. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 4, through December 31, 2010.
Daily Bag and Possession Limits: 10 and 20 geese, respectively.
General Conditions: Possession limits are twice the daily bag limits. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required. Use of live decoys, bait, and commercial use of migratory birds are prohibited. Waterfowl may not be pursued or taken while using motorized craft.

* * * * *

(l) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters).

Tribal Members

Ducks, Mergansers and Coots

Season Dates: Open September 11, 2010, through March 10, 2011.
Daily Bag and Possession Limits: Six ducks, including no more than one hen mallard, two scaup, one mottled duck, two redheads, two wood ducks, one canvasback, and one pintail. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than two hooded merganser. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 2, 2010, through March 10, 2011.
Daily Bag and Possession Limits: Three and six, respectively.

White-fronted Geese

Season Dates: Open October 2, 2010, through March 10, 2011.
Daily Bag and Possession Limits: Two and four, respectively.

Light Geese

Season Dates: Open October 2, 2010, through March 10, 2011.
Daily Bag and Possession Limits: 20 and 40, respectively.

Nontribal Hunters

Ducks (including mergansers and coots)

Season Dates: Open October 9, 2010, through January 13, 2011.
Daily Bag and Possession Limits: Six ducks, including no more than one hen mallard, two scaup, one mottled duck, one canvasback, two redheads, two wood ducks, and one pintail. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than two hooded mergansers. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 30, 2010, through February 13, 2011.
Daily Bag and Possession Limits: Three and six, respectively.

White-fronted Geese

Season Dates: Open October 30, 2010, through January 7, 2011, and open January 29 through February 13, 2011.
Daily Bag and Possession Limits: One and two, respectively.

Light Geese

Season Dates: Open October 30, 2010, through January 10, 2011, and open February 5 through March 10, 2011.
Daily Bag and Possession Limits: 20 and 40, respectively.
General Conditions: All hunters must comply with the basic Federal migratory bird hunting regulations in 50 CFR part 20, including the use of steel shot. Nontribal hunters must possess a validated Migratory Bird Hunting and Conservation Stamp. The Lower Brule Sioux Tribe has an official Conservation Code that hunters must adhere to when hunting in areas subject to control by the Tribe.

* * * * *

(o) Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nontribal Hunters).

Band-tailed Pigeons

Season Dates: Open September 1 through 30, 2010.
Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1 through 30, 2010.
Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Ducks (including mergansers and coots)

Scaup Season Dates: Open September 25 through December 19, 2010.
Season Dates: Open September 25, 2010, through January 9, 2011.
Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, three scaup (when open), one mottled duck, one canvasback, two redheads, and two pintail. Coot daily bag limit is 25. Merganser daily bag limit is seven. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open September 25, 2010, through January 9, 2011.
Daily Bag and Possession Limits: Four and eight, respectively.
General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

* * * * *

(s) Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Hunters).

Ducks and Mergansers

Scaup Season Dates: Open October 2 through December 26, 2010.
Season Dates: Open October 2, 2010, through January 16, 2011.
Daily Bag and Possession Limits: Seven ducks and mergansers, including no more than two hen mallards, two pintail, three scaup (when open), one canvasback, and two redheads. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.
Daily Bag and Possession Limits: 25 coots. The possession limit is twice the daily bag limit.

Common Snipe

Season Dates: Same as ducks.
Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Dark Geese

Season Dates: Open October 2, 2010, through January 16, 2011.

Daily Bag and Possession Limits: Four and eight, respectively.

Brant

Season Dates: Open October 2 through November 1, 2010.

Daily Bag and Possession Limits: Two and four, respectively.

Light Geese

Season Dates: Open October 2, 2010, through January 16, 2011.

Daily Bag and Possession Limits: 10 and 20, respectively.

General Conditions: Nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must possess a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Other regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

* * * * *

(v) *[Reserved.]*

(w) Stillaguamish Tribe of Indians, Arlington, Washington (Tribal Members Only).

Band-tailed Pigeon

Season Dates: Open September 1 through December 31, 2010.

Daily Bag and Possession Limits: Four and eight, respectively.

Mourning Dove

Season Dates: Open September 1 through December 31, 2010.

Daily Bag and Possession Limits: 10 and 20, respectively.

Ducks (including mergansers)

Season Dates: Open October 1, 2010, through February 15, 2011.

Daily Bag and Possession Limits: 10 ducks, including no more than 7 mallards of which only 3 may be hen mallards, 3 pintail, 3 canvasback, 3 scaup, and 3 redheads. The possession limit is twice the daily bag limit.

Coot

Season Dates: October 1, 2010, through January 31, 2011.

Daily Bag and Possession Limits: 25 and 50, respectively.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 6 and 12, respectively.

Brant

Season Dates: Open October 1, 2010, through January 31, 2011.

Daily Bag and Possession Limits: Three and six, respectively.

Snipe

Season Dates: Open October 1, 2010, through January 31, 2011.

Daily Bag and Possession Limits: 10 and 20, respectively.

General Conditions: Tribal members hunting on lands will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Stillaguamish Tribal Law Enforcement. Tribal members are required to use steel shot or a nontoxic shot as required by Federal regulations.

(x) *[Reserved.]*

(y) Tulalip Tribes, Tulalip, Washington (Tribal and Nontribal Members Only).

Tribal Members

Ducks

Season Dates: Open September 8, 2010, through February 28, 2011.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, two pintail, one canvasback, three scaup, and two redheads. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 8, 2010, through February 28, 2011.

Daily Bag and Possession Limits: Seven geese. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open September 8, 2010, through February 28, 2011.

Daily Bag and Possession Limits: Two and four brant, respectively.

Coots

Season Dates: Open September 8, 2010, through February 28, 2011.

Daily Bag and Possession Limits: 25 and 50 coots, respectively.

Snipe

Season Dates: Open September 8, 2010, through February 28, 2011.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Nontribal Members on Reservation

Ducks (Including mergansers)

Scaup Season Dates: Open November 6, 2010, through January 30, 2011.

Regular Duck Season Dates: Open October 16, 2010, through January 30, 2011.

Daily Bag and Possession Limits: Seven ducks and mergansers, including no more than two hen mallards, two pintail, one canvasback, three scaup (when open), and two redheads. Possession limit is twice the daily bag limit.

Dark Geese

Season Dates: Open October 16, 2010, through January 30, 2011.

Daily Bag and Possession Limits: Four and eight geese, respectively. Brant season is closed to nontribal hunters under final Federal frameworks in Sheldon County, Washington.

Light Geese

Season Dates: Open November 14, 2010, through February 28, 2011.

Daily Bag and Possession Limits: 10 and 20 geese, respectively.

Coots

Season Dates: Open October 16, 2010, through January 30, 2011.

Daily Bag and Possession Limits: 25 and 50 coots, respectively.

Snipe

Season Dates: Open October 16, 2010, and through January 30, 2011.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

General Conditions: All tribal hunters must have a valid Tribal ID card on his or her person while hunting. Shooting hours are one-half hour before sunrise to sunset, and steel shot is required for all migratory bird hunting. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(z) Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only).

Ducks

Season Dates: Open October 1, 2010, through February 28, 2011.

Daily Bag and Possession Limits: 15 and 20, respectively. The season on canvasbacks is closed.

Coots

Season Dates: Open October 15, 2010, through February 15, 2011.

Daily Bag and Possession Limits: 20 and 30, respectively.

Geese

Season Dates: Open October 15, 2010, through February 28, 2011.

Daily Bag and Possession Limits: Seven and ten geese, respectively.

Brant

Season Dates: Open November 1 through 10, 2010.

Daily Bag and Possession Limits: Two and two, respectively.

Mourning Dove

Season Dates: Open September 1 through December 31, 2010.

Daily Bag and Possession Limits: 12 and 15 mourning doves, respectively.

General Conditions: Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, except shooting hours would be one-half hour before official sunrise to one-half hour after official sunset.

(aa) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only).

Teal

Season Dates: Open October 12, 2010, through January 27, 2011.

Daily Bag Limits: Ten teal.

Ducks

Season Dates: Open November 1, 2010, through February 28, 2011.

Daily Bag Limits: Six ducks, including no more than four hen mallards, four black ducks, four mottled ducks, one fulvous whistling duck, four mergansers, three scaup, one hooded merganser, three wood ducks, one canvasback, two redheads, and one pintail. The season is closed for harlequin ducks.

Sea Ducks

Season Dates: Open October 12, 2010, through February 28, 2011.

Daily Bag Limits: Seven ducks including no more than four of any one species (only one of which may be a hen eider).

Woodcock

Season Dates: Open October 12 through November 27, 2010.

Daily Bag Limits: Three woodcock.

Canada Geese

Season Dates: Open September 13 through 30, 2010, and open October 30, 2010, through February 26, 2011.

Daily Bag Limits: Eight Canada geese during the first period and three during the second.

Snow Geese

Season Dates: Open September 8 through 22, 2010.

Daily Bag Limits: 15 snow geese.

General Conditions: Shooting hours are one-half hour before sunrise to sunset. Nontoxic shot is required. All other basic Federal migratory bird hunting regulations contained in 50 CFR part 20 will be observed.

* * * * *

(cc) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters).

Band-tailed Pigeons (Wildlife Management Unit 10 and areas south of Y–70 and Y–10 in Wildlife Management Unit 7, only)

Season Dates: Open September 1 through 15, 2010.

Daily Bag and Possession Limits: Three and six pigeons, respectively.

Mourning Doves (Wildlife Management Unit 10 and areas south of Y–70 and Y–10 in Wildlife Management Unit 7, only)

Season Dates: Open September 1 through 15, 2010.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Ducks

Scaup, Canvasback, and Pintail Season Dates: Open October 16 through December 5, 2010.

Other Duck Season Dates: Open October 16, 2010, through January 30, 2011.

Daily Bag Limits: Seven ducks, including no more than two hen mallards, three scaup (when open), two redheads, one canvasback (when open), and two pintail (when open).

Canada Geese

Season Dates: Open October 16, 2010, through January 30, 2011.

Daily Bag Limits: Three Canada geese per day.

General Conditions: All nontribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all nontribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking.

Dated: September 16, 2010.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–23757 Filed 9–23–10; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Friday,

September 24, 2010

Part VII

Department of Education

Fulbright-Hays Group Projects Abroad Program; Notices

DEPARTMENT OF EDUCATION

International Education Programs Service; Fulbright-Hays Group Projects Abroad Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of final priorities.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.021.

SUMMARY: The Assistant Secretary for Postsecondary Education announces two priorities for the Fulbright-Hays Group Projects Abroad (GPA) Program administered by the International Education Programs Service. The Assistant Secretary may use these priorities for competitions in fiscal year (FY) 2011 and later years.

We intend these two priorities to help increase the number of teachers at the Kindergarten–grade 12 (K–12) level with skills in a second language and knowledge of other cultures around the world by supporting short-term projects abroad (1) that provide pre-service teachers with training or courses in foreign languages and international area studies as part of a teacher education curriculum developed through collaboration between colleges or departments of education and colleges or departments of arts and sciences within institutions of higher education, and (2) in which at least 50 percent of participants are K–12 teachers, K–12 administrators, or both. The first priority supports projects that will help give pre-service teachers a deeper knowledge of languages and cultures from around the world. The second priority supports projects that will help increase the study abroad opportunities for in-service teachers, giving these individuals exposure to another country and its culture.

DATES: These priorities are effective October 25, 2010.

FOR FURTHER INFORMATION CONTACT: Michelle Guilfoil. Telephone: (202) 502–7625 or by e-mail: *Michelle.Guilfoil@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of the Fulbright-Hays Group Projects Abroad Program is to provide grants for overseas projects in training, research, and curriculum development in modern foreign languages and area studies that will engage teachers, students, and faculty in a common endeavor. Projects may include short-term seminars, curriculum development, or group research or study.

Program Authority: 22 U.S.C. 2452(b)(6).

Applicable Program Regulations: 34 CFR part 664. We published a notice of proposed priorities for this program in the **Federal Register** on May 13, 2010, 75 FR 26945. That notice contained background information and our reasons for proposing the particular priorities. There are no differences between the proposed priorities and these final priorities.

Public Comment: In response to our invitation in the notice of proposed priorities, one party submitted comments on the proposed priorities.

Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the proposed priorities.

Analysis of Comments: An analysis of the comment and any changes in the priorities since publication of the notice of proposed priorities follows.

Priority 2—Greater Participation of K–12 Educators

Comment: The commenter suggested that rather than offering a priority to those applicants that provide for 50 percent or greater participation of K–12 educators in a short-term project, the program should provide a certain percentage of awards to those projects that focus exclusively on K–12 educators. The rationale provided was that the projects that are most effective are those that are offered exclusively to either K–12 or postsecondary educators as it is difficult to effectively design one project that fully addresses the needs of both of these groups.

Discussion: While we agree with the commenter that addressing the needs of varying groups of educators within one project may present challenges, we do not believe that it is necessary to revise the priority to address this specific need. First, we note that nothing in the priority precludes applicants from proposing projects exclusively for either K–12 or postsecondary educators.

Second, in our experience, the GPA program has supported numerous successful projects that have provided exceptional opportunities for varying groups of educators. These GPA program participants have experienced substantive learning, not only about host countries, cultures and languages, but from each other as well. This collaboration amongst educators at different levels of the education system often proves to be extremely productive and beneficial to GPA projects in providing for substantive follow-up opportunities, collaboration, and additional professional growth experiences. Accordingly, we believe it is important for applicants to have the option of structuring their projects to focus on varying groups of educators.

Changes: None.

Final Priorities

Priority 1

Applications that, through collaborative efforts between one or more colleges or departments of education and one or more colleges or departments of arts and sciences within a single institution of higher education or within a consortium of higher education institutions, propose short-term projects abroad that provide pre-service teachers with training or courses in foreign languages and international area studies as part of the teacher education curriculum.

Priority 2

Applications that propose short-term projects abroad that develop and improve foreign language studies, area studies, or both at elementary and secondary schools by including K–12 teachers or K–12 administrators as at least 50 percent of the project participants.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitation. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use one or more of these priorities, we invite applications through a notice in the **Federal Register**.

Executive Order 12866: This notice of final priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits of the final priorities justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Assistant Secretary of Postsecondary Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education to perform the functions of the Assistant Secretary for Postsecondary Education.

Dated: September 21, 2010.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. 2010–24002 Filed 9–23–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education: Overview Information; Fulbright-Hays Group Projects Abroad Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2011

Catalog of Federal Domestic Assistance (CFDA) Number: 84.021A.

Dates:

Applications Available: September 24, 2010.

Deadline for Transmittal of Applications: October 26, 2010.

Deadline for Intergovernmental Review: December 27, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Fulbright-Hays Group Projects Abroad (GPA) Program supports overseas projects in training, research, and curriculum development in modern foreign languages and area studies for groups of teachers, students, and faculty engaged in a common endeavor. Projects are short-term and include seminars, curriculum development, or group research or study.

Priorities: This notice contains one absolute priority, three competitive preference priorities, and one invitational priority. In accordance with 34 CFR 75.105(b), the absolute priority and competitive preference priority I are from the regulations for this program (34 CFR 664.32), and competitive preference priorities II and III are from the notice of final priorities published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2011, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Specific geographic regions of the world: A group project funded under this priority must focus on one or more of the following geographic regions of the world: Africa, East Asia, South Asia, Southeast Asia and the Pacific, the Western Hemisphere (Central and South America, Mexico, and the Caribbean), East Central Europe and Eurasia, and the Near East.

Competitive Preference Priorities: Within this absolute priority, we are establishing the following competitive preference priorities.

Competitive Preference Priority I: For FY 2011, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) and 664.31(g), we award up to an additional five (5) points to an application that meets this priority.

This priority is:

Projects that provide substantive training and thematic focus on any of the seventy-eight (78) priority languages selected from the U.S. Department of Education's list of Less Commonly Taught Languages (LCTLs) found below.

This list includes the following: Akan (Twi-Fante), Albanian, Amharic, Arabic (all dialects), Armenian, Azeri (Azerbaijani), Balochi, Bamanakan (Bamana, Bambara, Mandikan, Mandingo, Maninka, Dyula), Belarusian, Bengali (Bangla), Berber (all languages), Bosnian, Bulgarian, Burmese, Cebuano (Visayan), Chechen, Chinese (Cantonese), Chinese (Gan), Chinese (Mandarin), Chinese (Min), Chinese (Wu), Croatian, Dari, Dinka, Georgian, Gujarati, Hausa, Hebrew (Modern), Hindi, Igbo, Indonesian, Japanese, Javanese, Kannada, Kashmiri, Kazakh, Khmer (Cambodian), Kirghiz, Korean, Kurdish (Kurmanji), Kurdish (Sorani), Lao, Malay (Bahasa Melayu or Malaysian), Malayalam, Marathi, Mongolian, Nepali, Oromo, Panjabi, Pashto, Persian (Farsi), Polish, Portuguese (all varieties), Quechua, Romanian, Russian, Serbian, Sinhala (Sinhalese), Somali, Swahili, Tagalog, Tajik, Tamil, Telugu, Thai, Tibetan, Tigrigna, Turkish, Turkmen, Ukrainian, Urdu, Uyghur/Uigur, Uzbek, Vietnamese, Wolof, Xhosa, Yoruba, and Zulu.

Competitive Preference Priority II: For FY 2011, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) and 664.31(g), we award up to an additional five (5) points to a short-term project abroad application that meets this priority.

This priority is:

Applications that propose short-term projects abroad that develop and improve foreign language studies, area studies, or both at elementary and secondary schools by including K–12 teachers or K–12 administrators as at least 50 percent of the project participants.

Competitive Preference Priority III: For FY 2011, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award up to an additional five (5) points to a short-term project abroad application that meets this priority.

This priority is:

Applications that, through collaborative efforts between one or more colleges or departments of education and one or more colleges or departments of arts and sciences within a single institution of higher education or within a consortium of higher education institutions, propose short-term projects that provide pre-service teachers with training or courses in foreign languages and international area studies as part of the teacher education curriculum.

Invitational Priority: For FY 2011 this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Applications that propose projects with K–12 teachers or administrators among the project participants and that recruit those teachers and administrators from high-need local educational agencies (LEAs). For purposes of this priority, the term *high-need LEA* means an LEA (a) that serves not fewer than 10,000 children from families with incomes below the poverty line; or (b) for which not less than 20 percent of the children served by the LEA are from families with incomes below the poverty line.

Program Authority: 22 U.S.C. 2452(b)(6).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 664. (c) The notice of final priorities for this program published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $15,576,000 for the Fulbright-Hays Programs (also referred to as the International Overseas Programs) for FY 2011, of which we intend to allocate $2,026,480 for new short-term projects under the Fulbright-Hays Group Projects Abroad Program. The actual level of funding, if any, depends on final Congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Note: As part of its FY 2011 budget request, the Administration proposed to continue to allow funds under this program to be used to support the participation of individuals who plan to apply their language skills and knowledge of countries vital to the United States' national security in fields outside teaching, including government, the professions, or international development. Therefore, institutions of higher education may propose projects for visits and study in foreign countries by individuals in these fields, in addition to those planning a teaching career. However, whether authority exists to use funds for participants outside of the field of teaching depends on final Congressional action. Applicants will be given an opportunity to amend their applications if Congress does not provide this authority.

Estimated Range of Awards: $30,000–$125,000.

Estimated Average Size of Awards: $84,437.

Maximum Award: We will reject any short-term GPA application that proposes a budget exceeding $125,000 for a single budget period of 18 months. The Assistant Secretary for Postsecondary Education may change the maximum award through a notice published in the **Federal Register**.

Estimated Number of Awards: 24.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

III. Eligibility Information

1. *Eligible Applicants:* (1) Institutions of higher education, (2) State departments of education, (3) Private nonprofit educational organizations, and (4) Consortia of these entities. Institutions that have never received an award under this program are encouraged to apply.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://e-grants.ed.gov.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.021A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the person or team listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is the section in which the applicant addresses the selection criteria that reviewers use to evaluate the application. The application narrative must be limited to no more than 40 pages, using the following standards:

• A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, and captions. Charts, tables, figures, and graphs in the application narrative may be single spaced and will count toward the page limit.

• Use a font that is either 12 point or larger; or, no smaller than 10 pitch (characters per inch). However, you may use a 10 point font in charts, tables, figures, and graphs.

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

• The page limit does not apply to Part I, the Application for Federal Assistance face sheet (SF 424); the supplemental information form required by the Department of Education; Part II, the budget summary form (ED Form 524); Part IV, assurances, certifications, and the response to Section 427 of the General Education Provisions Act (GEPA); the table of contents; the one-page project abstract; the appendices; or the line item budget. If you include any attachments or appendices not specifically requested, these items will be counted as part of the program narrative [Part III] for purposes of the page limit requirement.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times: Applications Available:* September 24, 2010.

Deadline for Transmittal of Applications: October 26, 2010.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application site (e-Application) accessible through the Department's e-Grants system. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to Section IV.7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: December 27, 2010.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, (1) you must have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN); (2) you must register both of those numbers with the Central Contractor Registry (CCR), the Government's primary registrant database; and (3) you must provide those same numbers on your application.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the GPA Program, CFDA number 84.021A, must be submitted electronically by using e-Application, accessible through the Department's e-Grants portal page at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this program after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application;

and

• No later than two weeks before the application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Michelle Guilfoil, Fulbright-Hays Group Projects Abroad Program, U.S. Department of Education, 1990 K Street, NW., Room 6098, Washington, DC 20006–8521. FAX: (202) 502–7860.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.021A) LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.021A) 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260. The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope (and, if not provided by the Department, in Item 11 of the SF 424) the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *General:* For FY 2011, short-term project applications will be reviewed by separate panels according to world area. Each panel reviews, scores, and ranks its applications separately from the applications assigned to the other world area panels. However, all applications will be ranked together from the highest to the lowest score for funding purposes.

2. *Selection Criteria:* The selection criteria for this program are from 34 CFR 664.31 and are as follows: (a) Plan of operation (20 points); (b) Quality of key personnel (10 points); (c) Budget and cost effectiveness (10 points); (d) Evaluation plan (20 points); (e) Adequacy of resources (5 points); (f) Potential impact of the project on the development of the study of modern foreign languages and area studies in American education (15 points); (g) The project's relevance to the applicant's educational goals and its relationship to its program development in modern foreign languages and area studies (5 points); and (h) The extent to which direct experience abroad is necessary to achieve the project's objectives and the effectiveness with which relevant host country resources will be utilized (10 points).

Additional information about these criteria is in the application package for this competition.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. Grantees are required to use the electronic data instrument *International Resource Information System* (IRIS) to complete the final report. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993, the following measure will be used by the Department to evaluate the success of the program: Percentage of all Fulbright-Hays Group Projects Abroad Program projects judged to be successful by the program officer, based on a review of information provided in annual performance reports.

The information provided by grantees in their performance reports submitted via IRIS will be the source of data for this measure. Reporting screens for institutions can be viewed at: *http://iris.ed.gov/iris/pdfs/gpa_director.pdf* and *http://iris.ed.gov/iris/pdfs/gpa_participant.pdf.*

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Michelle Guilfoil, Fulbright-Hays Group Projects Abroad Program, U.S. Department of Education, 1990 K Street, NW., Room 6098, Washington, DC 20006–8521. Telephone: (202) 502–7625 or by e-mail: *michelle.guilfoil@ed.gov.* The agency contact person does not mail application materials and does not accept applications.

If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/news/fedregister*. To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Assistant Secretary of Postsecondary Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education to perform the functions of the Assistant Secretary for Postsecondary Education.

Dated: September 21, 2010.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. 2010–23999 Filed 9–23–10; 8:45 am]

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Reader Aids

Federal Register

Vol. 75, No. 185

Friday, September 24, 2010

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General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
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TTY for the deaf-and-hard-of-hearing	**741–6086**

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CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

57846, 58290
47 58292
71 ..... 55267, 57373, 57374, 57375, 57376, 57383, 57846, 57847, 57848
73 53863
97 ..... 54766, 54769, 55961, 55963
141 56857
Proposed Rules:
39 ..... 53609, 54536, 55492, 55691, 56487, 57880, 57882, 57885, 58340
71 ..... 53876, 54057, 54058, 57215, 57216
117 55852
121 55852

15 CFR

730 53864
732 53864
734 ..... 53864, 54271
736 53864
738 53864
740 53864
742 ..... 53864, 54271
743 ..... 53864, 54271
744 ..... 53864, 54271
746 53864
747 53864
748 53864
750 53864
752 53864
754 53864
756 53864
758 53864
760 53864
762 53864
764 53864
766 53864
768 53864
770 53864
772 ..... 53864, 54271
774 ..... 53864, 54271
922 53567
Proposed Rules:
742 54540
744 54540
746 54540
806 ..... 53611, 57217
922 55692

16 CFR

310 55269
Proposed Rules:
801 57110
802 57110
803 57110

17 CFR

1 55410
3 55410
4 55410
5 55410
10 55410
140 55410
145 55410
147 55410
160 55410
166 55410
200 ..... 54464, 56668
201 57384
210 57385
229 57385
232 ..... 55965, 56668
240 ..... 54465, 56668
249 ..... 54465, 56668, 57385
Proposed Rules:
4 ..... 54794, 55698
16 ..... 54801, 54802
Ch. 2 55295
232 54059

18 CFR

35 58293
Proposed Rules:
35 54063

20 CFR

416 ..... 54285, 56858
606 57146
641 53786

21 CFR

2 56858
510 ..... 54016, 54017, 55676
520 ..... 54018, 54492, 55676
522 ..... 54017, 54018
524 54492
558 ..... 54019, 55676
870 54493
1310 53867

24 CFR

Ch. 2 54020

25 CFR

542 55269
543 55269

26 CFR

1 ..... 55677, 56858, 57163
602 ..... 56858, 57163
Proposed Rules:
1 ..... 54541, 54802, 55698
31 54541
301 55699

27 CFR

Proposed Rules:
9 53877
555 56489

28 CFR

35 56164
36 56236

29 CFR

4022 55966
4044 55966
Proposed Rules:
1908 54064
2570 54542

30 CFR

75 57849
Proposed Rules:
Ch. I 54804

31 CFR

575 55462
576 55463

32 CFR

706 58303
1701 57163

33 CFR

3 58304
100 ..... 55677, 55968, 56866, 57388
117 ..... 54023, 54024, 54770, 54771, 55475
127 54025
147 55970
154 54025
155 ..... 54025, 54026, 55973
165 ..... 53572, 53574, 53870, 54026, 54771, 55270, 55272, 55477, 55973, 55975, 56467, 56469, 57167, 57857, 58304
Proposed Rules:
100 56024
117 54069
167 ..... 55709, 56919

36 CFR

Proposed Rules:
200 55710
294 54542
1192 54543
1253 54543
1254 54543
1280 54543

37 CFR

201 56868
380 56873

38 CFR

3 ..... 54496, 57859
17 ..... 54028, 54496
36 56875
Proposed Rules:
5 53744
76 54069

39 CFR

111 54287
501 56471
Proposed Rules:
111 ..... 56920, 56922, 57410

40 CFR

9 ..... 56880, 57169
51 55636
52 ..... 54031, 54773, 54778, 55271, 55977, 55978, 55988, 56424, 56889, 57186, 57390, 57862, 58305, 58312
55 55277
60 ..... 54970, 55271, 55636
61 ..... 55271, 55636
63 ..... 54970, 55636
81 ..... 54031, 54497, 58312
98 57669
180 ..... 53577, 53581, 53586, 54033, 55991, 55997, 56013, 56892, 56897
228 54497
261 ..... 57686, 58315
271 ..... 57188, 58328
300 ..... 54779, 55479, 56015
721 ..... 56880, 57169
790 56472
1060 56477
Proposed Rules:
51 ..... 53613, 55711, 57220
52 ..... 53613, 53883, 53892, 53907, 54292, 54805, 54806, 55494, 55711, 55713, 55725, 56027, 56923, 56928, 56935, 56942, 57221, 57412
60 53908
72 ..... 53613, 55711
78 ..... 53613, 55711
81 56943
85 58078
86 58078
97 ..... 53613, 55711
136 58024
140 53914
260 58024
261 58346
300 54821
423 58024
430 58024
435 58024
600 58078
799 55728
1060 56491

41 CFR

300–80 58329

42 CFR

411 56015
Proposed Rules:
Ch. I 57230, 57233
100 55503
405 58204
424 58204
431 56946
438 58204
447 ..... 54073, 58204
455 58204
457 58204
498 58204
1007 58204

43 CFR

3000 ..... 55678, 58330
3910 55678
3930 55678

44 CFR

64 ..... 55280, 55683, 57688
67 55480
Proposed Rules:
61 54076
67 ..... 55507, 55515, 55527

45 CFR

Ch. XXV 54789
Proposed Rules:
1307 57704

46 CFR

8 56015

47 CFR

20 54508
64 54040
300 54790
Proposed Rules:
Ch. 1 55297
20 54546
54 56494

48 CFR

207 54524
211 54524
217 54526
227 54527
237 54524
252 54527
907 57690
923 57690
936 57690
952 57690

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 511/P.L. 111–231
To authorize the Secretary of Agriculture to terminate certain easements held by the Secretary on land owned by the Village of Caseyville, Illinois, and to terminate associated contractual arrangements with the Village. (Aug. 16, 2010; 124 Stat. 2489)

H.R. 2097/P.L. 111–232
Star-Spangled Banner Commemorative Coin Act (Aug. 16, 2010; 124 Stat. 2490)

H.R. 3509/P.L. 111–233
Agricultural Credit Act of 2010 (Aug. 16, 2010; 124 Stat. 2493)

H.R. 4275/P.L. 111–234
To designate the annex building under construction for the Elbert P. Tuttle United States Court of Appeals Building in Atlanta, Georgia, as the "John C. Godbold Federal Building". (Aug. 16, 2010; 124 Stat. 2494)

H.R. 5278/P.L. 111–235
To designate the facility of the United States Postal Service located at 405 West Second Street in Dixon, Illinois, as the "President Ronald W. Reagan Post Office Building". (Aug. 16, 2010; 124 Stat. 2495)

H.R. 5395/P.L. 111–236
To designate the facility of the United States Postal Service located at 151 North Maitland Avenue in Maitland, Florida, as the "Paula Hawkins Post Office Building". (Aug. 16, 2010; 124 Stat. 2496)

H.R. 5552/P.L. 111–237
Firearms Excise Tax Improvement Act of 2010 (Aug. 16, 2010; 124 Stat. 2497)

Last List August 16, 2010

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